Reporting Person's Information Return

ITA
233.1(2)

New subsection 233.1(2) of the Act provides that a reporting person (see the definition in proposed new subsection 233.1(1) of the Act) must file an information return for a taxation year in respect of the reportable transactions (see the definition in proposed new subsection 233.1(1)) in which the reporting person and a non-resident non-arm's length person (or a partnership of which that non-resident person is a member) participated in the year. The return must be filed by the reporting person's filing-due date for the year. A separate return is required to be filed for each such non-resident person (or partnership).

New subsection 233.1(2) applies to taxation years and fiscal periods that begin after 1997.

Reporting Partnership's Information Return

ITA
233.1(3)

New subsection 233.1(3) of the Act provides that a reporting partnership (see the definition in proposed new subsection 233.1(1) of the Act) must file an information return for a fiscal period in respect of the reportable transactions (see the definition in proposed new subsection 233.1(1)) in which the reporting partnership and a non-resident non-arm's length person (or a partnership of which that non-resident person is a member) participated in the period. An information return must also be filed by a reporting partnership under this subsection if a member of the reporting partnership does not deal at arm's length with such a non-resident person.

The due date for filing the return is the same as the due date for filing a partnership information return under section 229 of the *Income Tax Regulations*. If no section 229 return is required to be filed, the reporting partnership's information return under proposed new subsection 233.1(3) must be filed by the day by which the section 229 return would be required to be filed if that section did apply to the reporting partnership.

Proposed new subsection 233.1(3) applies to taxation years and fiscal periods that begin after 1997.

***De Minimis* Exception**

ITA
233.1(4)

New subsection 233.1(4) of the Act provides an exception to the reporting requirements in new subsections 233.1(2) and (3) of the Act. More specifically, it provides that a reporting person or partnership is not required to file an information return for a taxation year or fiscal period, unless the total of all amounts, each if which is the total fair market value of the property or services that relate to reportable transactions in which the reporting person or partnership and any non-resident non-arm's length person (or a partnership of which the non-resident person is a member) participated in the year or period, exceeds $1,000,000. Also included in determining whether a reporting partnership has exceeded the $1,000,000 threshold, is the value of property or services that relate to reportable transactions in which the reporting partnership and any non-resident person (or a partnership of which the non-resident person is a member) participated, where a member of the reporting partnership does not deal at arm's length with the non-resident person (or the partnership).

New subsection 233.1(4) applies to taxation years and fiscal periods that begin after 1997.

Deemed Member of Partnership

ITA
233.1(5)

New subsection 233.1(5) of the Act provides that, for the purpose of new subsection 233.1 of the Act, where a person is a member of a partnership which in turn is a member of a second partnership, the person is considered to be a member of both the first and the second partnership.

New subsection 233.1(5) applies to taxation years and fiscal periods that begin after 1997.

Clause 232

Foreign Reporting

ITA
233.2(1) and (4)

Subsection 233.2 of the Act requires residents of Canada to file an information return with Revenue Canada, under certain conditions, if they have transferred or lent property to a non-resident trust. One of the conditions is that the trust be a "specified foreign trust" as defined in subsection 233.2(1). A trust is defined to be a specified foreign trust if it is non-resident and it either has a "specified beneficiary" or its terms permit the addition of beneficiaries who could be residents of Canada at the time of being so added.

Subsection 233.2(1) is amended to expand the definition of specified foreign trust to mean a non-resident trust where the terms or conditions of the trust or any arrangement in respect of the trust, such as a letter of wishes, permit any persons to become, because of the exercise of any discretion by anyone, beneficially interested in the trust at a later time. Whether or not such persons could be residents of Canada at the time they become beneficially interested in the trust is no longer relevant.

The amended definition of specified foreign trust in subsection 233.2(1) applies after November 1997.

Subsection 233.2(4) of the Act generally requires residents of Canada to file an information return where they have transferred or lent property to a "specified foreign trust", as defined in subsection 233.2(1) of the Act, and a "non-arm’s length indicator" described in subsection 233.2(2) of the Act applies in respect of the transfer or loan. However, a non-arm’s length indicator in respect of transfer or loan to a trust is not required where paragraph (*b*) of the definition "specified foreign trust" applies in respect of the trust. In general, a trust is a specified foreign trust if it is non-resident and it either has a "specified beneficiary" resident in Canada or its terms permit the addition of beneficiaries who may be resident in Canada at the time of being so added.

An "exempt trust" is excluded from the definition "specified foreign trust". Under paragraph (*b*) of the definition "exempt trust" in subsection 233.2(1), an exempt trust includes a trust established in connection with a superannuation, pension or retirement fund or plan or any fund or plan established to provide employee benefits. This exemption only applies where the trust is exempt from income tax imposed by the country of its residence and the trust is maintained primarily for the benefit of non-resident individuals.

Paragraph (*b*) of the definition "specified foreign trust" is amended, effective after November 1997, so that a non-resident trust (other than an exempt trust) will be a specified foreign trust whenever its terms or conditions allow persons to become beneficially interested in the trust because of the exercise of any discretion. Whether or not such persons can be resident in Canada at the time they become beneficially interested in the trust is no longer relevant. Similarly, where there is an arrangement (typically evidenced by a letter of wishes) in respect of such a trust which contemplates persons becoming beneficially interested in the trust because of the exercise of any discretion, the trust will likewise be a "specified foreign trust" under the amended definition.

Paragraph (*b*) of the definition "exempt trust" is amended so that a non-resident trust does not lose its status as an exempt trust under that paragraph only because the trust is maintained primarily for the benefit of Canadian resident individuals, provided that the trust is governed by an employees profit sharing plan. The expression "employees profit sharing plan" is defined in subsection 144(1) of the Act. This amendment applies to returns in respect of trusts' taxation years that begin after 1995.

Paragraph 233.2(4)(*c*) is amended so that, in all cases, a "non-arm's length indicator" is required in respect of a transfer or loan by a person in order for the person to be required to file an information return in respect of a specified foreign trust under subsection 233.2(4). Whether or not paragraph (*b*) of the definition "specified foreign trust" applies is no longer relevant. This amendment applies after November 1997.

494

Clause 233

Social Insurance Number

ITA
237

Section 237 of the Act obliges every individual who is required to file an income tax return and does not have (and has not already applied for) a Social Insurance Number, to apply for a Social Insurance Number for the purpose of filing the return.

Section 237 of the Act has been restructured. Subsection 237(1) of the Act is amended to apply only to oblige such an individual to obtain a Social Insurance Number. New subsection 237(1.1) of the Act provides that the taxpayer's Social Insurance Number, as well as the taxpayer's business number (if applicable), must be provided in any return filed under the Act or at the request of any person required to make an information return in which either number is required.

Subsection 237(2) of the Act provides that any person making an information return has to make a reasonable effort to obtain the Social Insurance Number from the individual to whom the return relates. As a result of new subsection 237(1.1) of the Act, subsection 237(2) is amended to also require any person making an information return to make a reasonable effort to obtain, where applicable, the business number of the person or partnership to which the return relates.

These amendments apply on Royal Assent.

Clause 234

Tax Shelters

ITA
237.1

Section 237.1 of the Act requires promoters of a tax shelter to obtain an identification number from the Minister of National Revenue before selling the tax shelter.

Subclauses 234(1) to (3)

ITA
237.1(1)

Subsection 237.1(1) of the Act provides definitions for the purposes of the tax shelter identification rules. Subsection 237.1(1) is amended to ensure that the definition of:

- "person" includes a partnership;

- "promoter" includes a person who accepts, whether as principal or agent, consideration in respect of a tax shelter; and

- "tax shelter" applies to a property (including, for greater certainty, a right to income) where the amounts represented to be deductible, if a person were to acquire an interest in the property within four years after the day the property is acquired, *equal* or exceed the cost of the property (after the deduction of prescribed benefits).

For the purpose of the definition of "tax shelter", the cost of property is to be determined without reference to new section 143.2 of the Act. Consequential amendments are to be made to section 231 of the *Income Tax Regulations* to ensure that the prescribed benefits include section 143.2 reductions for any limited-recourse amounts and at-risk adjustments in respect of the taxpayer's expenditure.

The amendments relating to the definitions of "person" and "tax shelter" apply after November 1994, and the amendment relating to the definition of "promoter" applies after December 1, 1994.

Subclause 234(4)

ITA
237.1(4) and (6)

Subsections 237.1(4) and (6) of the Act are amended, applicable after December 1, 1994, consequential on the other amendments to section 237.1 of the Act described in these notes.

ITA
237.1(5)

Subsection 237.1(5) of the Act requires that the promoters of a tax shelter make reasonable efforts to ensure that the identification number assigned to a tax shelter is provided to every person who acquires an interest in the tax shelter. Subsection 237.1(5) is amended to require that promoters:

- prominently display on the upper right-hand corner of any statement of earnings the identification number for the tax shelter, and

- prominently display a specific "tax shelter statement" on every written statement made after 1995 by the promoter that refers (directly or indirectly and either expressly or impliedly) to the issuance of an identification number for the tax shelter, as well as on copies of the information return.

The above display requirements are analogous to the display requirements in former subsection 231(5) of the *Income Tax Regulations*. This amendment applies after December 1, 1994.

ITA
237.1(6.1)

New subsection 237.1(6.1) of the Act provides that an amount may not be deducted or claimed by any person for any taxation year in respect of a tax shelter where a penalty (and interest thereon) under subsection 162(9) of the Act or new subsection 237.1(7.1) of the Act has not been paid or, where it has been paid, an amount on account of the penalty (and interest) has been repaid under subsection 164(1.1) of the Act or applied under subsection 164(2) of the Act.

This subsection applies after December 1, 1994.

ITA
237.1(6.2)

New subsection 237.1(6.2) of the Act provides to the Minister of National Revenue the authority to make such assessments,

determinations and redeterminations as are necessary to give effect to this subsection 237(6.1) of the Act. New subsection 237.1(6.2) applies after December 1, 1994.

ITA
237.1(7)

Subsection 237.1(7) of the Act imposes an obligation on promoters to make an information return in respect of tax shelters. Subsection 237.1(7) is amended in two respects. First, a new requirement is imposed on promoters to provide either the Social Insurance Number or business number of investors in the tax shelter in the information return. Second, some grammatical and reference changes consequential on other amendments to section 237.1 are added.

These amendments generally apply after December 1, 1994; however, the requirement to furnish business numbers on information returns applies only on Royal Assent to this amendment.

ITA
237.1(7.1) to (7.3)

New subsection 237.1(7.1) of the Act provides that a tax shelter information return required under new subsection 237.1(7) of the Act is required to be filed with the Minister of National Revenue by the end of February of the year after the year in which the tax shelter was acquired. Where, however, the person required to file the information return in respect of a business or activity discontinues that business or activity in a calendar year, new subsection 237(7.2) of the Act provides that the return in respect of the calendar year is due the earlier of the day that is provided under new subsection 237.1(7.1) and the day that is 30 days after the discontinuance. Further, new subsection 237.1(7.3) of the Act provides that the filer of such an information return is to forward to each person to whom the return related two copies of the portion of the return relating to that person. These amendments apply after December 1, 1994.

ITA
237.1(7.4)

New subsection 237.1(7.4) of the Act is analogous to repealed subsection 162(9) of the Act. Subsection 237.1(7.4) imposes a penalty for failure to comply with the reporting requirements in respect of tax shelters under section 237.1 of the Act. The penalty that applies for failures to comply with reporting requirements is increased from 3 per cent to 25 per cent. This subsection applies after December 1, 1994.

Clause 235

Other Offences and Punishments

ITA
239

Section 239 of the Act establishes various offences involving wilful contravention and other contraventions that are considered serious.

Subclause 235(1)

ITA
239(1.1)

Subsection 239(1) of the Act creates an offence for making false statements, altering documents, etc. for the purpose of evading or reducing the tax payable by a person under the Act. It has been suggested that this subsection does not cover the situation where no tax is payable by the person but the same things are done for the purpose of obtaining or increasing a refund or credit under the Act. New subsection 239(1.1) of the Act avoids further uncertainty by creating a new offence for doing those things for the purpose of obtaining or increasing a refund or credit. This amendment applies on Royal Assent.

Subclause 235(2)

Prosecution on Indictment

ITA
239(2)

Subsection 239(2) of the Act provides that a charge for an offence under subsection 239(1) of the Act may be prosecuted by indictment, in which case an accused may be liable to a larger fine or a longer term of imprisonment. The amendment would make subsection 239(2) apply also to charges under new subsection 239(1.1) of the Act. This amendment applies on Royal Assent.

Subclause 235(3)

Offence With Respect to an Identification Number

ITA
239(2.3)

Subsection 239(2.3) of the Act provides that it is a criminal offence for a person who has been provided with an individual's Social Insurance Number pursuant to the Act or the regulations to use or communicate the number for other purposes. This subsection is amended to apply also with respect to a taxpayer or partnership's business number.

This amendment applies on Royal Assent.

Subclause 235(4)

Penalty on Conviction

ITA
239(3)

Subsection 239(3) of the Act protects a person convicted of an offence under section 239 of the Act from being penalized later under sections 162 or 163 of the Act. The amendment rewords subsection 239(3) to make it clear that it also applies to persons

convicted under new subsection 239(1.1) of the Act. This amendment applies on Royal Assent.

Clause 236

Taxpayer Information

ITA
241

Section 241 of the Act prohibits the use or communication of information obtained under the Act unless specifically authorized by one of the provisions found in that section.

Subclauses 236(1) to (7)

Various provisions in section 241 of the Act are amended to add references to the *Unemployment Insurance Act*, which was repealed by Bill C-12. These amendments are deemed to have come into force on June 30, 1996.

Subclause 236(5)

ITA
241(4)(*d*)(xiii)(B)

Subparagraph 241(4)(*d*)(xiii) of the Act allows taxpayer information to be provided to certain persons for the purposes of setting off sums of money owed by Her Majesty in Right of Canada against certain debts owed by the taxpayer. The taxpayer debts are those owed to Her Majesty in Right of Canada as well as those owed for taxes to Her Majesty in Right of a province if the province's tax is collected by the Minister of National Revenue. The amendment would remove the condition that debts owed to Her Majesty in Right of a province be for taxes collected by the Minister, thereby allowing taxpayer information to be provided for set-offs against any provincial debt.

This amendment applies on Royal Assent.

Subclause 236(8)

ITA
241(4)(*m*)

Subsection 241(4) of the Act specifies various circumstances in which government officials may use confidential taxpayer information or provide it to others. New paragraph 241(4)(*m*) of the Act is consequential on the enactment of new subsection 164(1.8) of the Act, which authorizes the Minister of National Revenue to pay all or part of an individual's tax refund to the government of a province at the request of the individual. New paragraph 241(4)(*m*) allows a government official to provide taxpayer information to an official of a provincial government where the information will be used solely in management or administration of a program relating to payments authorized under new subsection 164(1.8). This information will allow provincial governments to identify those individuals who have requested that their tax refunds be paid to the province and the amount of the payments.

This amendment applies on Royal Assent.

Subclause 236(9)

ITA
241(10)
"business number"

The definition of "business number" in subsection 241(10) of the Act is repealed as that term is now defined for the purposes of the Act in subsection 248(1) of the Act.

This amendment applies on Royal Assent.

502

Subclause 236(10)

Definitions

ITA
241(10)
"authorized person"

Section 241 of the Act prohibits the use or communication of information obtained under the Act unless specifically authorized by one of the provisions found in that section. Various provisions in section 241 are amended to add a reference to the *Unemployment Insurance Act*, which was repealed by Bill C-12. This amendment is deemed to have come into force on June 30, 1996.

Clause 237

Procedure and Evidence

ITA
244

Section 244 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of the Act.

Subclause 237(1)

Proof of Documents

ITA
244(9)

An affidavit may be sworn by an officer who has charge of the appropriate records and, in such cases, a document annexed to an affidavit is a true copy of a document and is evidence of the nature and contents of the document. Subsection 244(9) of the Act is amended, effective on Royal Assent, to give this same effect to a print-out of an electronic document.

Subclause 237(2)

Proof of Documents

ITA
244(13)

Subsection 244(13) of the Act provides that any document purported to be executed by an officer authorized by regulation to act for the Minister of National Revenue is deemed to have been executed by that officer unless called into question by the appropriate authority. This subsection is amended, as a consequence of the repeal of paragraph 221(1)(*f*) of the Act and the addition of subsection 220(2.01) to the Act, to replace the reference to a person authorized by regulation with a reference to a person authorized by the Minister.

This amendment applies on Royal Assent.

Mailing Date

ITA
244(14)

Subsection 244(14) of the Act provides a rule presuming the date shown on a notice of assessment made by the Minister of National Revenue, or on a notice or notification made by the Minister under certain other provisions of the Act, to be the date of mailing. The scope of this provision is extended so that it also applies in respect of a notice of determination made by the Minister. Subsection 244(14) is also amended by replacing the reference to subsection 152(4) of the Act with references to subsections 152(3.1) and 165(3) of the Act.

Prior to an amendment made to subsection 152(4) of the Act by chapter 39 of the Statutes of Canada, 1990, subparagraph 152(4)(*a*)(ii) contained a reference to the day of mailing of a notice of assessment or a notification that no tax is payable. As a result of that amendment, the computation of the time limit is now contained in subsection 152(3.1). Subsection 244(14) is therefore amended to refer to subsection 152(3.1) instead of 152(4).

Under subsection 165(3) of the Act, the Minister shall, on receipt of a notice of objection, reconsider an assessment and vacate, confirm or vary the assessment or reassess. The Minister also has to notify in writing the taxpayer of the decision. The provisions of subsection 244(14) apply to a notice of assessment that has been varied under subsection 165(3) or to a reassessment because such notices are caught by the words "notice of assessment" but a notice that confirms an assessment is not. A reference to subsection 165(3) is therefore added to subsection 244(14), so that the date shown on a notice that confirms an assessment and that was sent in accordance with subsection 165(3) is presumed to be the mailing date of the notice.

These amendments to subsection 244(14) apply on Royal Assent.

Date when Assessment Made

ITA
244(15)

Subsection 244(15) of the Act provides that a notice of assessment sent by the Minister of National Revenue is deemed to have been made on the day of mailing of the notice of the assessment. The scope of that provision is extended so that it also applies to a notice of determination.

This amendment to subsection 244(15) applies on Royal Assent.

Clause 238

Transfer Pricing

ITA
247

Proposed new section 247 in proposed new Part XVI.1 of the Act is related to the issue of transfer pricing for property or services purchased and sold in cross-border transactions and the determination of amounts for tax purposes.

Definitions

ITA
247(1)

Proposed new subsection 247(1) of the Act defines a number of terms for the purpose of proposed new section 247 dealing with ransfer pricing.

An "arm’s length allocation" means an allocation of profit or loss that would have occurred between the participants in a transaction assuming they had been dealing at arm’s length with each other. Similarly, an "arm’s length transfer price" means an amount that would have been a transfer price in respect of a transaction assuming the participants in the transaction had been dealing at arm’s length with each other.

The term "transfer price" is used in the definition "arm’s length transfer price". It is defined as an amount paid or payable or received or receivable by a participant in a transaction as a price, a rental, a royalty, a premium or other payment for, or for the use, production or reproduction of, property or as consideration for services, as part of the transaction. For greater certainty, the term services includes the services of an employee and the insurance or reinsurance of risks.

The term " qualifying cost contribution arrangement" refers to an arrangement under which the participants collectively make reasonable efforts to establish a basis for contributing to, and to contribute on that basis to, the cost of producing, developing or acquiring any property, or acquiring or performing any services, in proportion to the benefits which each participant is reasonably expected to derive from the property or services as a result of the arrangement.

The terms "arm’s length allocation", "arm’s length transfer price" and "qualifying cost contribution arrangement" are relevant for the purposes of the penalty provision in proposed new subsection 247(3) of the Act for certain transfer pricing adjustments made by the Minister of National Revenue pursuant to proposed new subsection 247(2) of the Act.

A "tax benefit" means a reduction or deferral of tax or other amount payable under the Act or an increase in a refund of tax or other amount under the Act. this term is relevant for the purposes of proposed new subparagraph 247(2)(*b*)(ii) of the Act.

A "transfer pricing capital adjustment" of a taxpayer for a taxation year consists of two amounts. The first amount is the total of

- 3/4 of all reductions made under proposed new subsection 247(2) to the adjusted cost base of a non-depreciable capital property of the taxpayer or an eligible capital expenditure of the taxpayer and

- all reductions made under proposed new subsection 247(2) to the capital cost of a depreciable property of the taxpayer.

The second amount is relevant only if the taxpayer is a member of a partnership. It is equal to the total of all amounts each of which is that proportion of the total of

- 3/4 of all reductions made under proposed new subsection 247(2) to the adjusted cost base of a non-depreciable capital property of the partnership or an eligible capital expenditure of the partnership, and

- all reductions made under proposed new subsection 247(2) to the capital cost of a depreciable property of the partnership,

that the taxpayer’s share of the income or loss of the partnership for the period is of the total income or loss of the partnership for the period.

If the income and loss of the partnership for the period are nil, the partnership is deemed to have income in the amount of $1,000,000 for the purpose of determining the taxpayer’s share of the partnership’s income for the purpose of this definition.

Conversely, a "transfer pricing capital setoff adjustment" of a taxpayer for a taxation year contains the corresponding increases made under proposed new subsection 247(2) to the adjusted cost base or capital cost of capital property or the eligible capital expenditures of the taxpayer or the partnership, as the case may be.

A "transfer pricing income adjustment" of a taxpayer for a taxation year means the total of all amounts by which the taxpayer's income for the year would increase or the taxpayer's loss for the year from a source would decrease because of an adjustment made under proposed new subsection 247(2), assuming that was the only adjustment made under that subsection.

Conversely, a "transfer pricing income setoff adjustment" of a taxpayer for a taxation year means the total of all amounts by which the taxpayer's income for the year would decrease or the taxpayer's loss for the year from a source would increase because of an adjustment made under proposed new subsection 247(2), assuming that was the only adjustment made under that subsection.

The definitions "transfer pricing capital adjustment", "transfer pricing capital setoff adjustment" , "transfer pricing income adjustment" and "transfer pricing income setoff adjustment" are relevant for the purpose of the penalty in proposed new subsection 247(3).

The "documentation-due date" is the date by which a person or partnership is required to have prepared its transfer pricing documentation under new subsection 247(4) of the Act. The documentation-due date for a taxation year of a person is the person's tax return filing-due date for the year. In the case of a partnership, for a fiscal period, it is the day by which its return under section 229 of the *Income Tax Regulations* is required to be filed for the period or would be required to be so filed if that section applied to the partnership.

Transfer Pricing Adjustment

ITA
247(2)

In general terms, proposed new subsection 247(2) of the Act requires that, for tax purposes, non-arm's length parties conduct their transactions under terms and conditions that would have prevailed if the parties had been dealing at arm's length with each other. Therefore, proposed new subsection 247(2) embodies the arm's length principle.

More specifically, proposed new subsection 247(2) applies in situations where a taxpayer or a partnership and a non-resident person with whom the taxpayer, the partnership or a member of the partnership does not deal at arm's length (or a partnership of which the non-resident person is a member) are participants in a transaction or a series of transactions and

- the terms or conditions of the transaction or series differ from those that would have been made between persons dealing at arm's length, or

- the transaction or series would not have been entered into between persons dealing at arm's length and may reasonably be considered not to have been entered into primarily for bona fide purposes other than to obtain a tax benefit.

Where these conditions are met, proposed new subsection 247(2) may adjust any amounts that, but for that subsection and the general anti-avoidance rule in section 245 of the Act, would have been determined for the purposes of the Act in respect of the taxpayer or the partnership. Such amounts may be adjusted to reflect the quantum or nature of the amounts that would have been determined if the participants had been dealing at arm's length with each other.

Proposed new subsection 247(2) applies to taxation years and fiscal periods that begin after 1997.

Penalty

ITA
247(3)

In general terms, proposed new subsection 247(3) of the Act provides that a taxpayer is liable to a penalty for a taxation year if the total amount of the taxpayer's "reduced" transfer pricing income and capital adjustments for the year exceeds the lesser of 10 per cent of the taxpayer's gross revenue for the year and $5,000,000. A taxpayer's transfer pricing income and capital adjustments are reduced to the extent that they can reasonably be considered to relate to

- a transaction that is a qualifying cost contribution arrangement (see proposed new subsection 247(1) of the Act) and in which the

taxpayer (or a partnership of which the taxpayer is a member) is a participant, or

- a transaction in respect of which the taxpayer (or a partnership of which the taxpayer is a member) made reasonable efforts to determine arm's length transfer prices or arm's length allocations (see proposed new subsection 247(1)), and to use those prices or allocations for tax purposes.

They are further reduced by the total of the taxpayer's transfer pricing capital and income setoff adjustments, to the extent those adjustments can reasonably be considered to relate to transactions described above.

It should be noted, however, that no reduction may be made to a taxpayer's transfer pricing income and capital adjustments or to a taxpayer's transfer pricing income and capital setoff adjustments if the taxpayer (or a partnership of which the taxpayer is a member) has failed to document its transactions in accordance with the provisions of proposed new subsection 247(4) of the Act. Briefly, that subsection requires a taxpayer (or a partnership of which the taxpayer is a member) to document the transactions that are governed by proposed new subsection 247(2) of the Act by the taxpayer's (or partnership's) documentation-due date (see new subsection 247(1)) and to provide such documentation to the Minister of National Revenue within 3 months of a request therefor. If the taxpayer fails to comply with these requirements, proposed new subsection 247(4) deems the taxpayer not to have made reasonable efforts to determine arm's length transfer prices or arm's length allocations in respect of a transaction or not to have participated in a qualifying cost contribution arrangement.

If the taxpayer's "reduced" transfer pricing income and capital adjustments for the year exceed the lesser of $5,000,000 and 10 per cent of the taxpayer's gross revenue for the year, determined without reference to proposed new subsection 247(2), subsections 69(1) and (1.2) and section 245 of the Act, the taxpayer is liable to a penalty for the year equal to 10 per cent of the amount of the "reduced" transfer pricing income and capital adjustments.

The penalty in proposed new subsection 247(3) of the Act applies to adjustments made under proposed new subsection 247(2) for taxation

years or fiscal periods that begin after 1998; however, adjustments made in respect of transactions completed before Announcement Date are not subject to the penalty.

Contemporaneous Documentation

ITA
247(4)

In broad terms, proposed new subsection 247(4) of the Act requires a taxpayer to document its transactions that are governed by proposed new subsection 247(2) of the Act, failing which the taxpayer will be liable to the penalty (assuming the taxpayer's "reduced" transfer pricing income and capital adjustments exceed the penalty threshold) in proposed new subsection 247(3) of the Act.

More specifically, proposed new subsection 247(4) deems a taxpayer not to have made reasonable efforts to determine arm's length transfer prices or allocations in respect of a transaction nor to have participated in a transaction that is a qualifying cost contribution arrangement, unless the taxpayer (or the partnership) makes or obtains certain records or documents by its documentation-due date (see new subsection 247(1) of the Act) for the taxation year (or fiscal period) in which the transaction is entered into. Put another way, the taxpayer's transfer pricing income and capital adjustments otherwise determined for the year will not be able to be reduced for purposes of calculating the penalty in proposed new subsection 247(3) unless certain documentation requirements have first been satisfied. Similarly, in computing the penalty, the taxpayer's transfer pricing income and capital adjustment cannot be reduced by the taxpayer's transfer pricing income and capital setoff adjustments unless the documentation requirements are met for the transactions which give rise to the setoff adjustments.

The records or documents which are required to be made or obtained must provide a description that is complete and accurate in all material respects of

- the property or services to which the transaction relates,

- the terms and conditions of the transaction and how they relate to the terms and conditions of other transactions entered into between the participants,

- the identity of the participants and their relationship at the time the transaction was entered into,

- the functions performed, the property used or contributed and the risks assumed by the participants,

- the data and transfer pricing methods (for example, the comparable uncontrolled price method) considered and the analysis performed to determine the transfer prices or allocations of profits or losses or contributions to costs in respect of the transaction, and

- the assumptions, strategies and policies, if any, that influenced the determination of the transfer prices or the allocations of profits or losses or contributions to costs in respect of the transaction.

Where the transaction that is being documented spans more than one taxation year or fiscal period, the taxpayer or partnership must completely and accurately document each material change occurring in the subsequent year or period to the matters listed above. Such documentation is required to be made or obtained by the taxpayer's or partnership's documentation-due date (see new subsection 247(1) of the Act) for that subsequent year or period.

All the documentation that must be prepared under this subsection is required to be provided to the Minister of National Revenue within 3 months of service, made personally or by registered or certified mail, of a written request therefor.

Proposed new subsection 247(4) applies to adjustments made under proposed new subsection 247(2) for taxation years that begin after 1998. It should be noted, however, that a record or document made or obtained or provided to the Minister by the documentation-due date for the taxpayer's first taxation year (or the partnership's first fiscal period) that begins after 1998 is deemed to have been made, obtained or provided on a timely basis.

Partner’s Gross Revenue

ITA
247(5)

Proposed new subsection 247(5) of the Act provides a rule to determine a taxpayer’s gross revenue from membership in a partnership for the purpose of the penalty provision in proposed new subsection 247(3) of the Act. Under proposed new subsection 247(3), a taxpayer is not liable to a penalty for a taxation year unless the total of the taxpayer’s "reduced" transfer pricing income and capital adjustments for the year exceeds the lesser of $5,000,000 and 10 per cent of the taxpayer’s gross revenue for the year, determined without reference to proposed new subsection 247(2) of the Act, subsections 69(1) and (1.2) and section 245 of the Act.

Under proposed new subsection 247(5), the taxpayer’s gross revenue for a taxation year as a member of a partnership is that proportion of the partnership’s gross revenue for a fiscal period ending in the year (computed as though the partnership were a taxpayer and without reference to any amounts received or receivable from other partnerships of which the taxpayer is a member in the year), that the taxpayer’s share of the income or loss of the partnership from its activities for the period is of the total income or loss of the partnership from its activities for the period. If the income or loss of the partnership for the period are nil, the partnership is deemed to have income in the amount of $1,000,000 for the purpose of determining the taxpayer’s share of the partnership’s income for the purpose of this subsection.

Proposed new subsection 247(5) applies with respect to adjustments made under proposed new subsection 247(2) for taxation years and fiscal periods that begin after 1998; however, proposed new subsection 247(5) does not apply with respect to transactions completed before Announcement Date.

Deemed Member of Partnership

ITA
247(6)

Proposed new subsection 247(6) of the Act provides that, for the purpose of proposed new section 247 of the Act, a person who is a member of a partnership which in turn is a member of another partnership is considered to be a member of that other partnership. It also provides that a member's share of the income or loss of the other partnership is deemed to be the amount to which it is directly or indirectly entitled.

Proposed new subsection 247(6) applies to taxation years and fiscal periods that begin after 1997.

Exclusion for Loans to Subsidiary

ITA
247(7)

Proposed new subsection 247(7) of the Act effectively exempts interest-free and low interest loans made by a corporation resident in Canada to a non-resident subsidiary it controls from the application of proposed new subsection 247(2) of the Act.

Proposed new subsection 247(7) applies to taxation years and fiscal periods that begin after 1997.

Provisions Not Applicable

ITA
247(8)

Proposed new subsection 247(8) of the Act ensures that where

- proposed new subsection 247(2) of the Act would apply to adjust an amount under the Act, assuming the Act were read without reference to section 67 and 68 and subsections 69(1) and (1.2) of the Act, and

- subsection 247(2) is, in fact, applied to adjust the quantum or nature of that amount, then sections 67 and 68 and subsections 69(1) and (1.2) shall not apply to determine the quantum of that amount.

Proposed new subsection 247(8) applies to taxation years and fiscal periods that begin after 1997.

Anti-avoidance

ITA
247(9)

Proposed new subsection 247(9) of the Act is an anti-avoidance rule intended to prevent taxpayers from artificially increasing their gross revenue for the purpose of the penalty in proposed new subsection 247(3) of the Act. It provides that, for the purpose of the gross revenue penalty threshold in proposed new subparagraph 247(3)(b)(i) of the act and the determination of a partner's gross revenue under proposed new subsection 247(5), a transaction or a series of transactions is deemed not to have occurred where a purpose of the transaction or series was to increase a taxpayer's gross revenue for the purpose of the penalty.

Proposed new subsection 247(9) applies with respect to adjustments made under proposed new subsection 247(2) for taxation years and fiscal periods that begin after 1998; however, proposed new subsection 247(9) does not apply with respect to transactions completed before Announcement Date.

No Adjustment Unless Appropriate

ITA
247(10)

Proposed new subsection 247(10) of the Act provides that adjustments (other than adjustments that result in or increase a transfer pricing capital or income adjustment of a taxpayer for a taxation year) shall not be made under proposed new subsection 247(2) of the Act unless the Minister considers that such adjustments would be appropriate in the circumstances.

Proposed new subsection 247(10) applies to taxation years and fiscal periods that begin after 1997.

Provisions Applicable to Part

ITA
247(11)

Proposed new subsection 247(11) of the Act ensures that the provisions of Part I of the Act relating to assessments, payments, penalties, refunds, objections and appeals apply to proposed new Part XVI.1 of the Act.

Proposed new subsection 247(11) applies to taxation years and fiscal periods that begin after 1997.

Clause 239

Definitions

ITA
248

Section 248 of the Act defines a number of terms that apply for the purposes of the Act, and sets out various rules relating to the interpretation and application of various provisions of the Act.

Subclauses 239(1) to (6)

"business number"

The definition of "business number" is currently in subsection 241(10) of the Act. That definition is moved to subsection 248(1) to apply for all purposes of the Act.

This amendment applies on Royal Assent.

"Canadian field processing"

Subsection 248(1) of the Act defines "Canadian field processing". Activities characterized as "Canadian field processing" are not treated

as "manufacturing or processing" (M & P) activities that qualify for the M & P tax credit or favourable treatment under the capital cost allowance rules. Instead, such activities result in an increase in a taxpayer's entitlement to the resource allowance under paragraph 20(1)(*v*.1) of the Act.

As currently defined, "Canadian field processing" includes the processing in Canada of raw natural gas at a natural gas processing plant to any stage that is not beyond the stage of natural gas acceptable to a common carrier of natural gas. Paragraph (*g*) ensures that natural gas is still considered to be "raw", despite having been processed at a field separation and dehydration facility.

Paragraph (*g*) of the definition is being amended so that natural gas will be considered to be "raw" only until it is accepted by a common carrier. This amendment clarifies the tax treatment of mainline straddle plants, which receive their gas from common carriers. The input received by such plants can consist, in part, of sweet natural gas which has only been processed at field dehydration and separation facilities and which otherwise would be treated as "raw" natural gas for the purpose of the definition. As a consequence, all of the processing activities of the small number of these plants in Canada will generally be treated as M & P activities rather than as Canadian field processing.

This amendment applies after 1996.

"cemetery care trust"

Subsection 248(1) of the Act is amended to introduce the definition "cemetery care trust". For further information, see the commentary on the new definition in subsection 148.1(1) of the Act.

This amendment applies after 1992.

"cost amount"

Subparagraph (*e*)(iv) of the definition of "cost amount" in subsection 248(1) of the Act is amended consequential on the rules that apply to a right to receive production to which a matchable expenditure relates ("right to receive production" and "matchable

expenditure" are defined in new section 18.1). This subsection applies after November 17, 1996.

"flow-through share"

Subsection 248(1) is amended to add the definition "flow-through share", which has the meaning assigned by subsection 66(15) of the Act. This amendment applies after November 1994.

"legal representative"

Subsection 248(1) of the Act is amended to add a definition of "legal representative" of a taxpayer. This definition contemplates persons who are acting in a fiduciary or a representative capacity. Specifically, trustees in bankruptcy, assignees, liquidators, curators, receivers of any kind, trustees, heirs, administrators, executors or committees as well as any other like person are considered to be legal representatives, provided that they administer, wind up, control or otherwise deal in a representative or fiduciary capacity with the taxpayer‘s property or property held for the taxpayer’s benefit. Typically, legal representatives will be subject to the joint and several liability rules in subsection 159(1), as well as to the requirement to obtain a clearance certificate before distributing any property under their control.

This amendment applies on Royal Assent.

"lending asset"

A lending asset is a bond, debenture, mortgage, note, agreement of sale or any other indebtedness or a prescribed share but does not include a prescribed property. Section 6209 of the *Income Tax Regulations* sets out the shares and the properties that are prescribed for the purpose of this definition. The definition of lending asset is amended to refer to prescribed property rather than prescribed security. New subparagraph 6209(*b*)(iii) of the Regulations provides that certain leases will be prescribed property. The new definition of lending asset applies to taxation years that end after September 1997, and also to taxation years that end after 1995 and before October 1997 where the taxpayer elects to have the reserve provisions in new paragraph 20(1)(*l*) of the Act apply to those years.

"licensed annuities provider"

The definition "licensed annuities provider" is added to subsection 248(1) of the Act to make the definition of that term in subsection 147(1) generally applicable for all purposes of the Act. Under subsection 147(1), a "licensed annuities provider" is a person licensed or otherwise authorized under the laws of Canada or a province to carry on an annuities business in Canada.

The term is now used in the amended definitions of "qualified investment" in subsections 146(1) and 146.3(1) of the Act.

This definition applies after 1996.

"majority interest partner"

The new definition "majority interest partner" in subsection 248(1) of the Act replaces that formerly found in subsection 97(3.1) of the Act. The new definition differs in two respects from the existing one. First, it applies on the basis of the entitlement of a member of a partnership to the partnership's income from all sources, rather than that member's entitlement to income from each source. Second, it uses the concept of affiliated persons introduced in new section 251.1 of the Act in its aggregation of various partnership interests.

A person or partnership (the "taxpayer") will be considered to be a majority interest partner of a partnership at any given time where the taxpayer was entitled to more than half of the partnership's income from all sources for the immediately preceding fiscal period (or, where the partnership is in its first fiscal period, for that period), or would be entitled to more than half of the amount paid to all members of the partnership if it were wound up at that time. For the purposes of this rule, a taxpayer will be considered to hold each interest that the taxpayer or an affiliated person held in the partnership. (The concept of affiliated persons has been introduced in new section 251.1 of the Act, and is described in the commentary to that section.)

This definition applies after April 26, 1995.

"mineral"
"mineral resource"

Subsection 248(1) of the Act includes definitions of "mineral" and "mineral resource", which are used in the Act and the *Income Tax Regulations* for the purposes of determining a taxpayer's mining income.

The definition "mineral" is amended to eliminate a reference to "oil sands". This reference is redundant because of the existing reference in the definition to "bituminous sands". The definition "mineral" is also amended so that ammonite gemstone is included within its scope. Ammonite gemstone is a naturally occurring substance which is obtained from the fossils of ammonite (an extinct shellfish).

The definition "mineral resource" is likewise amended so that a "mineral resource" includes deposits from which the main mineral extracted is ammonite gemstone.

These amendments generally apply to taxation years that begin after 1996, subject to transition rules described below.

The first transition rule provides, for greater certainty, that the amendments with respect to ammonite gemstone do not result in the recategorization of previously-made resource expenditures or previously incurred resource costs. Thus, for example, pre-1997 exploration expenses for ammonite gemstone deposits will not be included in a taxpayer's cumulative Canadian exploration expense after 1996. In addition, the amendments will not result in the creation of depletion pools that are deductible under section 65 of the Act.

The second transition rule allows for the conversion, on a rollover basis, from another category of property for income tax purposes to either Canadian resource property or foreign resource property. The conversion normally takes place at the beginning of taxation years that begin after 1996. Note, in this context, that subsection 13(5) of the Act already provides rules to allow transfers on a rollover basis between different classes of depreciable properties (including transfers resulting from changes to the law or regulations).

The intention of the second transition rule, in conjunction with subsection 13(5), is to provide for a fresh start in connection with properties that are recategorized as a consequence of the changes with respect to ammonite gemstones. In this context, it is contemplated that these amendments may have the following effect:

- certain non-depreciable capital property (e.g., real property with substantial ammonite gemstone content) could be reclassified as "Canadian resource property" or "foreign resource property" for income tax purposes, and

- depreciable property of a class may be recategorized as depreciable property of another class.

"record"

Subsection 248(1) of the Act is amended to add the definition of record. The definition encompasses a variety of items, whether they are in writing or in any other form. This definition applies on Royal Assent.

"scientific research and experimental development"

The definition "scientific research and experimental development" in subsection 248(1) of the Act is amended to eliminate the cross reference to the definition in Income Tax Regulation 2900(1) and now contains the substantive definition of "scientific research and experimental development". Subsection 2900(1) of the *Income Tax Regulations* is being repealed contemporaneously.

Paragraph (*d*) of the definition has been amended for greater certainty to emphasize that, in applying the definition to a taxpayer, paragraph (*d*) includes only work undertaken by or on behalf of the taxpayer with respect to the items included in that paragraph where the work is commensurate with the needs, and directly in support, of work described in paragraph (*a*), (*b*), or (*c*) of the definition that is undertaken in Canada by or on behalf of the taxpayer.

The new definition applies to work performed after February 27, 1995. However, for the purposes of paragraphs 149(1)(*j*) and 8(*b*) of the Act, the new definition does not apply to work performed pursuant to an agreement in writing made before February 28, 1995.

"term preferred share"

Subsection 248(1) of the Act contains a definition of "term preferred share". These are shares the dividends on which are denied the intercorporate dividend deduction if received by a specified financial institution in certain circumstances. The definition contains a number of exclusions, including that in paragraph (*d*.1) for shares issued before April 22, 1980 by a corporation described in any of paragraphs 39(5)(*b*) to (*f*) of the Act (or an associated corporation) if the shares are listed on a Canadian stock exchange.

Paragraph (*d*.1) of the definition is amended so that instead of referring to a corporation described in any of paragraphs 39(5)(*b*) to (*f*), it refers to a corporation referred to in any of paragraphs (*a*) to (*d*) of the definition of "specified financial institution" in subsection 248(1) or a corporation whose principal business is money lending or purchasing debt obligations. This amendment is made as a consequence of amendments to subsection 39(5), and does not change the substance of the exclusion. This amendment applies after February 22, 1994.

Subclause 239(7)

Beneficially Interested

ITA
248(25)

Subsection 248(25) of the Act provides that a person or partnership is "beneficially interested" in a trust if that person or partnership has an absolute or conditional right to the income or capital of the trust, either directly from the trust or indirectly through one or more trusts, or if that person or partnership is otherwise regarded as "beneficially interested" in the trust.

Amended subsection 248(25) is divided into three paragraphs. New paragraph 248(25)(*a*) of the Act contains, with some minor modifications, former subsection 248(25). Minor changes have been made to the parenthetical words in that subsection and the look-through portion of the rule has been extended to include partnerships as well as trusts.

New paragraph 248(25)(*b*) of the Act expands the meaning of beneficially interested by deeming a person or partnership, under certain conditions, to be beneficially interested in a particular trust at a particular time where the person or partnership would not otherwise be regarded as beneficially interested in the particular trust at that time. More specifically, a person or partnership will be deemed to be beneficially interested in a particular trust at a particular time where the following conditions are met:

- the particular person or partnership is not otherwise beneficially interested in the particular trust at the particular time;

- because of the terms or conditions of the particular trust or any arrangement, such as an arrangement evidenced by a letter of wishes, in respect of the trust, the particular person or partnership might become, because of the exercise of any discretion by anyone, beneficially interested in the particular trust at the particular time or at a later time; and

- at or before the particular time either (1) the particular trust has acquired property directly or indirectly in any manner whatever from the particular person or partnership or another person or partnership now described in any of subclauses 248(25)(*b*)(ii)(A)(II) to (V) of the Act (a "connected person") or (2) the particular person or partnership or a connected person has given a guarantee on behalf of the particular trust or provided it with any other type of financial assistance.

If the above conditions are met, the particular person or partnership is deemed considered to be beneficially interested in the particular trust at the particular time.

New paragraph 248(25)(*c*) of the Act provides that a member of a partnership that is beneficially interested in a trust is deemed to be beneficially interested in the trust.

These amendments apply after November 1997.

Clause 240

Fiscal Periods –
Alternative Method Not Applicable to Tax Shelter Investments

ITA
249.1(5)

Subsection 249.1(5) of the Act provides that the "alternative fiscal-period method" in subsection 249.1(4) of the Act does not apply in the case of a business the expenditures of which are, or were, primarily tax shelters. Subsection 249.1(5) is amended, applicable to fiscal periods that begin after 1994, consequential on the enactment of the definition of "tax shelter investment" in new subsection 143.2(1) of the Act.

Clause 241

International Shipping Corporations

ITA
250(6)

Whether or not a person is resident in Canada for tax purposes is a factual question, subject to several special rules in the Act. One of these rules, in subsection 250(6) of the Act, provides additional certainty as to the residence of an international shipping corporation. Subsection 250(6) treats a corporation formed outside Canada as being throughout a taxation year resident in its country of incorporation and not in Canada, provided certain criteria are met. One requirement, in paragraph 250(6)(*a*) of the Act, is that the corporation's principal business in the year be the operation of ships in international traffic. A second, in paragraph 250(6)(*b*) of the Act, is that all or substantially all of the corporation's gross revenue for the year be from such operations.

For liability, registry or other reasons, a shipping corporation may place its ships in one or more separate wholly-owned subsidiaries. Revenue from the operation of ships currently does not include dividends from such a subsidiary. Nor does the holding of one or

more shipping subsidiaries clearly qualify as the operation of ships in international traffic.

Paragraph 250(6)(*a*) is amended to treat the holding of shipping subsidiaries as the equivalent, for these purposes, of carrying on a shipping operation directly. More specifically, amended paragraph 250(6)(*a*) requires that a corporation either meet the principal business test itself, or hold throughout the year shares of one or more wholly-owned corporations, each of which itself meets the tests in subsection 250(6). Provided the total cost amount to the parent corporation of its shares in such subsidiaries is throughout the year at least half the total cost amount of all its property, the parent corporation need not itself meet the principal-business test.

Similarly, paragraph 250(6)(*b*) is amended to count as international shipping revenue dividends from subsidiary wholly-owned corporations that themselves qualify as non-residents under the provision. Amended paragraph 250(6)(*b*) requires that all or substantially all of a corporation's gross revenue for the year under consideration be from:

- the operation of ships in transporting passengers or goods in international traffic;

- dividends from one or more subsidiary wholly-owned corporations (as defined by subsection 87(1.4) of the Act), each of which is treated by subsection 250(6) as resident in a country other than Canada throughout each of its taxation years that began after February 1991 (when subsection 250(6) was introduced) and before the last time at which it paid any of those dividends; or

- any combination of the above.

This amendment applies to the 1995 and subsequent taxation years.

Clause 242

Corporations – Control and Share Rights

ITA 251

Section 251 deals with the concept of arm's length and defines the circumstances in which persons, including corporations, will be regarded as related for tax purposes.

Subclause 242(1)

Amalgamations of Related Corporations

ITA
251(3.2)

New subsection 251(3.2) of the Act provides that where there is an amalgamation of 2 or more related corporations (other than related corporations that are related because of a right referred to in paragraph 251(5)(*b*) of the Act), the new corporation formed as result of the amalgamation will be considered to be related to each of the predecessor corporations. For example, assume ACo is a widely-held publicly-traded taxable Canadian corporation. ACo owns 65 per cent and 70 per cent of two taxable Canadian corporations MCo and NCo respectively. ACo, MCo and NCo amalgamate to form AmalCo. AmalCo is related to ACo, MCo and NCo. New subsection 251(3.2) applies to amalgamations that occur after 1996.

Subclauses 242(2) and (3)

ITA
251(5)(*b*)

Subsection 251(5) of the Act sets out rules that apply in deciding under subsection 251(2) of the Act whether persons are related, and in applying the definition "Canadian controlled private corporation" in subsection 125(7) of the Act. Paragraph 251(5)(*b*) of the Act describes how a person who has any of certain rights is to be treated in determining who controls a corporation. These rights – which may be held under a contract, in equity or otherwise, and may be immediate or future, absolute or contingent – are described in

subparagraphs 251(5)(*b*)(i) and (ii) of the Act. Those subparagraphs also describe the consequences of holding the rights.

Besides adding a clarifying time reference in the opening words of paragraph 251(5)(*b*), this amendment adds two new sorts of rights to those listed in the provision. New subparagraph 251(5)(*b*)(iii) of the Act provides that a person who has at any time a right to (or to acquire or control) voting rights in respect of a corporation's shares will be considered to be able to exercise those voting rights at that time. Similarly, new subparagraph 251(5)(*b*)(iv) of the Act provides that a person who has at any time a right to cause the reduction of other shareholders' voting rights will be treated as though those voting rights were so reduced at that time. Neither provision applies to a right that is not exercisable at the time in question because it can be exercised only on an individual's death, bankruptcy or permanent disability.

These amendments apply after April 26, 1995.

Clause 243

Affiliated Persons

ITA
251.1

New section 251.1 of the Act introduces the concept of "affiliated persons" or persons affiliated with one another. This concept, defined in new subsection 251.1(1) of the Act, is relevant to a number of other new and amended provisions of the Act, most notably those restricting the realization of losses on certain transfers. New section 251.1 applies after April 26, 1995.

Definition of Affiliated Persons

ITA
251.1(1)
"affiliated persons"

In order to understand new subsection 251.1(1)'s definition of "affiliated person," a few rules set out in new subsections 251.1(3)

and (4) of the Act for the purposes of that section should be noted at the outset. The most basic of these are that persons are considered to be affiliated with themselves, and that a person includes a partnership. In addition, the word "controlled" is to be read in this context as "controlled, directly or indirectly in any manner whatever."

New paragraph 251.1(1)(*a*) of the Act provides that two individuals are considered to be affiliated only where they are spouses of one another.

New paragraph 251.1(1)(*b*) of the Act describes a corporation as being affiliated with three categories of person. The first is a person by whom the corporation is controlled. The second are the members of an affiliated group of persons by which the corporation is controlled. An affiliated group of persons, under new subsection 251.1(2) of the Act, is a group of persons each member of which is affiliated with every other member. The third category are the spouses of persons in either of the first two categories.

EXAMPLE 1 – paragraphs 251.1(1)(a) and (b):

F, an individual, controls one corporation ("F Ltd") alone, and controls a second corporation ("FG Ltd") as a member of a group that consists of F and G, another individual. F is a spouse of a third individual, M, but not of G.

F and M are affiliated persons under paragraph 251.1(1)(a). F Ltd is affiliated with F under subparagraph 251.1(1)(b)(i), and with M under subparagraph (iii). Since F and G are not affiliated with one another (and are thus not an affiliated group), FG Ltd is not affiliated with either F or G.

Where a corporation is controlled by another corporation, or by an affiliated group that includes a corporation, new paragraph 251.1(1)(*b*) will treat the two corporations as being affiliated with one another. New paragraph 251.1(1)(*c*) of the Act lists several additional circumstances under which two corporations are affiliated persons. In the first of these, in subparagraph (*c*)(i), each corporation is controlled by a person, and those controlling persons are affiliated with one another. Similarly, where one corporation is controlled by a person and the other corporation is controlled by a group of persons, the two corporations are affiliated

under subparagraph (*c*)(ii) if each member of that group is affiliated with the person controlling the first corporation. Finally, under subparagraph (*c*)(iii) corporations that are controlled by groups of persons are affiliated if each member of each group is affiliated with at least one member of the other group.

It should be noted that the references in paragraph 251.1(1)(*c*) to groups of persons are not confined to affiliated groups of persons.

EXAMPLE 2 – subparagraphs 251.1(1)(c)(i) and (ii):

A Ltd, B Ltd, C Ltd and D Ltd are corporations. A Ltd is controlled by K, an individual. B Ltd is controlled by Q, K's spouse. C Ltd is controlled by a group made up of K and Q, and D Ltd is controlled by a group made up of B Ltd and C Ltd.

Since K and Q are affiliated, A Ltd and B Ltd are affiliated under subparagraph 251.1(1)(c)(i). A Ltd and C Ltd are affiliated under subparagraph (c)(ii), as are B Ltd and C Ltd. D Ltd is affiliated with B Ltd and C Ltd – the members of an affiliated group that controls D Ltd – under subparagraph 251.1(b)(ii). Are A Ltd and D Ltd affiliated? B Ltd and C Ltd are each affiliated with K, because K and Q form the affiliated group that controls both companies. Under subparagraph (c)(ii), therefore, A Ltd and D Ltd are affiliated.

EXAMPLE 3 – subparagraph 251.1(1)(c)(iii):

H, D and L, three individuals, control HDL Ltd as a group. J, E and M are spouses of H, D and L respectively, and control JEM Ltd as a group. Under subparagraph 251.1(c)(iii), HDL Ltd and JEM Ltd are affiliated, because each member of each group is affiliated with at least one member of the other group.

New paragraph 251.1(1)(*d*) of the Act specifies a circumstance, in addition to those addressed elsewhere in subsection 251.1(1), in which a corporation and a partnership are affiliated. Where a corporation is controlled by a group of persons each member of which is affiliated with at least one member of a majority-interest group of partners of a partnership (as defined in new subsection 251.1(2) of the Act), and each member of that majority-interest group of partners is affiliated with at least

one member of the group that controls the corporation, the corporation and the partnership are affiliated under paragraph (*d*). This rule resembles the rule in subparagraph 251.1(1)(*c*)(iii), described above.

Additional specific rules regarding the affiliations of partnerships are provided in new paragraphs 251.1(1)(*e*) and (*f*) of the Act. Under paragraph (*e*), a partnership and a majority-interest partner of the partnership are affiliated with one another. In determining whether a person is a majority-interest partner of a partnership, the new definition of "majority-interest partner" in subsection 248(1) of the Act looks not only to that person's interest, if any, in the partnership, but also to the interests of all persons affiliated with that person. In effect, then, any person affiliated with a person who holds a majority interest in a partnership is also a majority-interest partner, and thus is affiliated with the partnership under paragraph 251.1(1)(*e*).

Paragraph 251.1(1)(*f*) provides a set of rules for partnerships broadly comparable to those established for corporations in paragraph 251.1(1)(*c*). Two partnerships are affiliated under paragraph (*f*) if any of three situations obtains. First, under subparagraph (*f*)(i) the partnerships are affiliated if the same person is a majority-interest partner of both partnerships. Second, under subparagraph (*f*)(ii) the partnerships are affiliated if a majority-interest partner of one is affiliated with each member of a majority-interest group of partners of the other. Lastly, where there is a majority-interest group of partners of each partnership (or more than one such group), the partnerships are affiliated under subparagraph (*f*)(iii) if each member of a group of each partnership is affiliated with at least one member of a group of the other partnership.

The possibility that a partnership may have more than one majority-interest group of partners means that the interests of all partners – and of all persons affiliated with a partner – must be carefully considered in order to establish whether two partnerships (or a partnership and a corporation) are affiliated.

Affiliation Where Amalgamation or Merger

ITA
251.1(2)

New subsection 251.1(2) of the Act provides a special rule for the affiliation of corporations in relation to an amalgamation or merger. Where two or more corporations amalgamate or merge to form a new corporation, that new corporation and a predecessor corporation will in certain cases be treated as having been affiliated with one another. This deemed affiliation will arise where the new corporation and the predecessor would have been affiliated if the new corporation had existed before the amalgamation or merger, and if it had the same shareholders at that time as it had after the merger.

Definitions

ITA
251.1(3)

New subsection 251.1(3) of the Act sets out several special definitions relevant to the definition "affiliated persons" in new subsection 251.1(1) of the Act. Each of these special definitions applies for the purposes of section 251.1 of the Act.

"affiliated group of persons"

An affiliated group of persons is a group of persons each member of which is affiliated with every other member.

"controlled"

Under subsection 256(5.1) of the Act, the expression "controlled, directly or indirectly in any manner whatever" is given a particular meaning, commonly referred to as "de facto control". The definition of the word "controlled" in new subsection 251.1(2) of the Act imports this de facto control test into section 251.1 of the Act.

"majority-interest group of partners"

A majority-interest group of partners of a partnership is any group of partners that meets two criteria. First, the partnership interests of the

group members must be such that if one person held all of those interests, that person would be a majority-interest partner of the partnership. Second, there must be no subset of the group of which that would be true: it must be the case, in other words, that if the interest of any member of the group were set aside, and the remaining group members' interests were held by one person, that person would not be a majority-interest partner of the partnership.

EXAMPLE 4 – majority-interest group of partners:

5 partners each hold a 20-per-cent interest in a partnership. In this case, any group of 3 partners is a majority-interest group of partners of the partnership. A group of fewer than 3 will not represent interests that would, if they were held by one person, make that person a majority-interest partner, and thus will not meet the first criterion. A group of more than 3 will not meet the second criterion, since even if one member's interest were ignored, the interests of the remaining group members would, if held by one person, make that person a majority-interest partner.

Interpretation

ITA
251.1(4)

New subsection 251.1(4) of the Act sets out two rules relevant to the definition "affiliated persons" in new subsection 251.1(1) of the Act. These rules, which are also described in the commentary to that subsection, provide (for the purposes of section 251.1 of the Act) that persons are affiliated with themselves and that a person includes a partnership.

Clause 244

Meaning of Spouse

ITA
252(4)

Subsection 252(4) of the Act provides that the term "spouse" of a taxpayer generally includes a person of the opposite sex who has

been cohabiting in a conjugal relationship with the taxpayer for at least twelve months or who is a parent of a child of whom the taxpayer is also a parent. This amendment to subsection 252(4), which applies after 1992, ensures that the parental relationship in this case extends only to the parent's own children, and not, for example, to daughters-in-law or sons-in-law.

Clause 245

Contract Under Pension Plan

ITA
254

Section 254 of the Act contains rules that apply where a contract is issued in satisfaction of an individual's rights under a pension plan. Paragraph 254(*a*) of the Act provides that, where the rights provided under the contract are rights provided under the plan, any payment made under the contract is considered to be a payment from the plan. By virtue of paragraph 56(1)(*a*) of the Act, such payments are included in the recipient's income for the year in which they are received. Paragraph 254(*a*) also ensures that there is no immediate taxation by deeming the individual not to have received a payment from the plan as a consequence of the contract being issued. Where the rights provided under the contract are not rights provided under the plan, paragraph 254(*b*) of the Act deems the individual to have received from the plan an amount equal to the value of those rights. The individual is required, by virtue of paragraph 56(1)(*a*), to include that amount in income for the year in which the contract is issued.

Section 254 is amended to restrict its application to contracts issued before July 31, 1997. Similarly, paragraph 254(*a*) is amended so that it applies only where an individual acquired an interest in a contract before July 31, 1997. This change is consequential on the introduction of new subsection 147.4(1) of the Act, which deals with annuity contracts acquired on or after July 31, 1997. It should be noted that an amendment to a contract to which paragraph 254(*a*) applies will be subject to new subsection 147.4(2) of the Act if it materially alters the rights under the contract. The consequences of the application of that subsection are that there is an immediate income inclusion and paragraph 254(*a*) ceases to apply to payments

made under the contract. It should also be noted that, where a contract to which paragraph 254(*a*) applies is replaced by a new contract, new subsection 147.4(3) of the Act provides that payments under the new contract continue to be subject to paragraph 254(*a*) so long as the rights under the two contracts are not materially different. For further details, see the commentary on section 147.4 of the Act.

Finally, it should be noted that new subsection 147.4(1) of the Act applies only to contracts acquired in satisfaction of benefits provided to an individual under a registered pension plan. Consequently, neither paragraph 254(*a*) nor subsection 147.4(1) apply to defer immediate taxation in respect of annuity contracts acquired on or after July 31, 1997 under unregistered pension arrangements.

Clause 246

Acquisition of Control of a Corporation

ITA
256

Section 256 of the Act provides rules for determining whether corporations are to be considered to be associated and whether control of a corporation has been acquired for the purposes of the Act.

Subclause 246(1)

ITA
256(6)

The portion of subsection 256(6) of the English version of the Act after paragraph (*b*) is amended to delete the reference to "for the purposes of that provision", as the opening portion of that subsection no longer specifies that the rule it contains applies "for the purposes of any provision of this Act". This amendment applies to taxation years that begin after 1988.

Subclauses 246(2)

Acquiring Control

ITA
256(7)

The opening words of subsection 256(7) of the Act are amended to add references to subsections 10(10), 13(21.2) and (24), 14(12), 18(15) and 40(3.4) of the Act, and the definition "superficial loss" in section 54 of the Act. After April 26, 1995, subsection 256(7) will apply to these provisions in addition to those to which it currently applies.

Subclauses 246(3) and (4)

ITA
256(7)

Subsection 256(7) of the Act describes the circumstances where control of a corporation is considered not to have been acquired, and certain circumstances where control of a corporation is considered to have been acquired, for the purposes of various provisions of the Act.

Subparagraph 256(7)(*a*)(ii) of the Act provides that control of a particular corporation or a corporation controlling it will not be considered to have been acquired because of a redemption or cancellation of shares where each person or each member of a group of persons that controls the corporation after the redemption or cancellation was related to the corporation immediately before the redemption or cancellation.

Subparagraph 256(7)(*a*)(ii) is amended, applicable to the 1994 and subsequent taxation years, in two ways. First, the amendments provide that a change in the rights, privileges, restrictions or conditions attaching to shares of the corporation or of a corporation that controls it will not result in an acquisition of control in circumstances set out in this subparagraph. Second, the amendments modify the circumstances in which these events will not result in an acquisition of control. **Each** person and each member of **each** group of persons that controls the corporation after the redemption or cancellation of shares or the change in the rights, privileges,

restrictions or conditions attached to the shares must be related to the corporation

- immediately before purchase, cancellation or change, or

- immediately before the death of a person where the shares were held immediately before the purchase, cancellation or change by an estate that acquired them on the death of a person.

Where there has been a merger of two or more corporations to form a new corporation, existing paragraph 256(7)(*b*) of the Act generally deems control of a predecessor corporation to have been acquired if the person or group of persons who control the new corporation did not control the predecessor corporation immediately before the amalgamation. This paragraph is amended to provide that control of a corporation is considered not to have been acquired solely because of an amalgamation unless it is deemed by either of two new rules, set out in subparagraphs 256(7)(*b*)(ii) and (iii) of the Act, to have been acquired.

The first of these rules, in subparagraph 256(7)(*b*)(ii), replicates existing paragraph (*b*). Where a person or group of persons controls the new corporation and did not control a predecessor corporation, that person or group is treated as having acquired control of that predecessor, and of any corporation it controlled before the amalgamation. An exception provides that this deemed acquisition of control will not apply if, had the person or group acquired all the shares of the predecessor before the amalgamation, the person or group would not have acquired control of the predecessor. This ensures that subparagraph 256(7)(*b*)(ii) does not deem an acquisition of control in certain internal reorganizations of corporate groups.

The second rule, in subparagraph 256(7)(*b*)(iii), deems control of a predecessor corporation and of each corporation controlled by it before the merger to have been acquired by a (hypothetical) person or group of persons unless

- the predecessor corporation was related, immediately before the merger, to each other predecessor corporation, or

- if one person had (again hypothetically) acquired all the shares of the new corporation received by shareholders of the predecessor

corporation (or of another predecessor that controlled that predecessor) on the merger in consideration for their shares of the predecessor corporation (or the other predecessor, as the case may be), that person would have acquired control of the new corporation, or

- subparagraph 256(7)(*b*)(iii) would otherwise deem control of every predecessor to have been acquired, in an amalgamation of two corporations and their controlled subsidiaries – as it would, for example, if two corporations of equal value amalgamated, with the shareholders of each taking back half the shares of the new corporation.

Amended paragraph 256(7)(*b*) of the Act applies to mergers occurring after April 26, 1995, except in certain specific circumstances. The amendment may also apply to a merger that occurred after 1992 and before April 26, 1995, where the corporation formed on the merger so elects within six months of Royal Assent to the amendment.

New paragraph 256(7)(*c*) of the Act deals with reverse takeover transactions which are illustrated by the following examples.

EXAMPLE A:

An individual, Mr. X, owns all the shares of a corporation (Lossco) which have a total fair market value of $100,000. A profitable public corporation (Pubco) that is not controlled by any person or group of persons wishes to gain access to Lossco's non-capital loss carryforward. If Pubco were to acquire the shares of Lossco from Mr. X, various stop-loss rules in the Act would limit the deductibility of those losses. Instead, the shareholders of Pubco transfer their shares of Pubco to Lossco in exchange for shares of Lossco worth $10,000,000. Mr. X relinquishes control of Lossco as a result of the exchange.

EXAMPLE B:

Assume the same facts as in example A except that, instead of transferring their shares of Pubco to Lossco in a share-for-share exchange, the shareholders of Pubco receive shares of Lossco in consideration for the disposition of their shares of Pubco on a

triangular amalgamation or merger of Pubco and a wholly owned subsidiary of Lossco.

In each of these examples, there is no acquisition of control of Lossco under the existing rules unless there is a group of shareholders that controls Lossco after the takeover. However, if new paragraph 256(7)(*c*) were applied to each of these examples, control of Lossco would be considered to have been acquired by a person or group of persons because the shares of Lossco issued to the shareholders of Pubco in each case are such that, if they had been acquired by one person, that person would have acquired control of Lossco. This paragraph applies to mergers that occur after April 26, 1995 except in certain specified circumstances.

New paragraph 256(7)(*d*) of the Act provides that no acquisition of control of a corporation will be considered to have occurred solely because of a share-for-share exchange where the person or group of persons who controlled the corporation before the exchange still controls it after the exchange. This paragraph applies to exchanges that occur after April 26, 1995.

New paragraph 256(7)(*e*) of the Act provides that no acquisition of control of a particular corporation will be considered to have occurred solely because of an exchange of shares of the particular corporation for shares of the acquiring corporation when the acquiring corporation is not controlled by a person or group of persons immediately after the exchange and the fair market value of the shares of the particular corporation is not less than 95 per cent of the fair market value of the assets of the acquiring corporation. Subject to specified grandfathering, new paragraph 256(7)(*e*) applies to exchanges that occur after April 26, 1995.

Subsection 256(7) is also amended to add a reference to new section 18.1 (relating to matchable expenditures) so that in the circumstances described in subsection 256(7) control of a corporation will not be considered to have been acquired for the purpose of subparagraph 18.1(10)(*b*)(ii) of the Act. This amendment applies after November 17, 1996.

Subclause 246(5)

Deemed Right of Exercise

ITA
256(8)

Subsection 256(8) of the Act extends the circumstances in which an acquisition of control is considered to have occurred for the purposes of a number of provisions of the Act. If a taxpayer acquires a right referred to in paragraph 251(5)(*b*) of the Act with respect to shares, and it can reasonably be concluded that one of the main purposes of acquiring the right is to avoid the application of certain income tax provisions that are triggered by an acquisition of control, subsection 256(8) will apply. In its current form, the subsection treats the taxpayer, for the purposes of determining whether control of the corporation has been acquired, as having acquired the shares.

This amendment modifies subsection 256(8) in three respects. First, subsection 10(10), paragraph 88(1)(*c*.3) and subsections 181.1(7) and 190.1(6) of the Act are added to the list of rules whose avoidance will trigger the provision, and for the purposes of which it will apply. Paragraph 88(1)(*c*.3) relates to the so-called back-door butterfly which restricts the capital property eligible for the paragraph 88(1)(*d*) step-up in cost of assets acquired on certain corporate wind-ups. Subsection 181.1(7) limits the unused surtax credit that a corporation may deduct in computing its tax liability under Part I.3 of the Act after it has undergone an acquisition of control. Subsection 190.1(6) similarly limits a financial institution’s deduction of unused Part I tax credits and unused surtax credits.

Second, new paragraph 256(8)(*d*) provides that an acquisition of a right that is intended to avoid the application of new section 251.1 of the Act will trigger its application by treating the right to have been exercised. Section 251.1 defines "affiliated persons" for the purposes of the Act – a definition applying in particular with respect to certain transfers giving rise to losses.

Third, the effect of subsection 256(8) is broadened, to correspond to an amendment to paragraph 251(5)(*b*). Under that amendment a right to affect the voting rights of shares is treated comparably to a right to acquire the shares themselves or to force their redemption. Amended

subsection 256(8) therefore treats the taxpayer as having exercised the right in question, rather than as having acquired the shares.

This amendment applies after April 26, 1995 except that the references to subparagraph 88(1)(*c*)(vi) and paragraph 88(1)(*c*.3) of the Act apply after February 21, 1994.

Corporations Without Share Capital

ITA
256(8.1)

Certain corporations, such as mutual insurers and some non-profit entities, are organized without share capital. New subsection 256(8.1) of the Act ensures that subsections 256(7) and (8) of the Act apply appropriately to such corporations. For the purposes of those subsections, a corporation without share capital is treated as having a single class of shares, and each participant in the corporation is treated as having an appropriate number of those shares, having regard to the total number of participants and the nature of their participation.

New subsection 256(8.1) applies after April 26, 1995.

Clause 247

Coming-Into-Force – Loss Deferral

This legislation includes a number of amendments to the Act to consolidate, simplify and improve the rules that defer losses that would otherwise arise on certain transfers of property. Those amendments generally apply to dispositions after April 26, 1995. Section 247 of this bill sets out certain exceptions to that effective date.

First, dispositions that occurred before 1996 pursuant to written obligations made on or before April 26, 1995, are not subject to the new loss-deferral rules.

Second, a disposition is also not subject to the new rules if it, or a series of transactions of which it formed a part, was substantially

advanced before April 27, 1995 (unless the transaction or series was intended to give an unrelated person access to a deduction or a balance of undeducted outlays, expenses or other amounts).

For these purposes, a person will not be considered obliged to acquire a property where the person may be excused from fulfilling the obligation because of any change to the Act or because of any adverse assessment made under the Act.

If a transferor who would otherwise be subject to either of these exceptions would nonetheless prefer to have the new rules apply to its disposition, the transferor may obtain that result by filing an election with the Minister of National Revenue before the end of the third month following the month in which this Act is assented to. It should be noted that such an election cannot be made in respect of only some of the listed amendments: if it is made, the election applies all of the new rules to the given transaction.

Clause 248

Depreciable Property – Transitional Rules

Income Tax Application Rules
20(1)

Subsection 20(1) of the *Income Tax Application Rules* (the "Rules") is designed to prevent the taxation of gains on depreciable property that accrued to December 31, 1971 (referred to as "valuation day"). This is achieved by providing that, where a taxpayer's capital cost of the depreciable property at the time of disposition is less than its fair market value on valuation day and less than the proceeds of disposition, the taxpayer's proceeds of disposition, for the purposes of section 13 of the amended Act and subdivision c of Division B of Part I of the Act (the subdivision that deals with capital gains and losses), will be the amount that is equal to the total of its capital cost to the taxpayer and the amount by which the proceeds of disposition exceed the fair market value of the property on valuation day. Where the taxpayer elects under subsection 110.6(19) of the Act in respect of depreciable property, the taxpayer is deemed by that subsection to have disposed of the property for proceeds of disposition equal to the amount designated in the election in respect of the property. If that

property were owned by the taxpayer without interruption since before 1972, the proceeds so determined are reduced by paragraph 20(1)(*a*) of the Rules. In turn, under paragraph 20(1)(*c*) of the Rules the taxpayer is treated for the purposes of the Act (other than for certain specified purposes such as, paragraphs 8(1)(*j*) and (*p*) and sections 13 and 20 of the Act) to have reacquired the property at a capital cost equal to the taxpayer's proceeds of disposition determined under paragraph 20(1)(*a*) of the Rules.

Paragraph 20(1)(*c*) of the Rules is amended, applicable to the 1994 and subsequent taxation years, to provide that, where a taxpayer has designated an amount for the election under subsection 110.6(19) of the Act that does not exceed 110 per cent of the fair market value of the property on February 22, 1994, the taxpayer is treated for the purposes of the Act (other than for the purposes of paragraphs 8(1)(*j*) and (*p*) and sections 13 and 20 of the Act) to have reacquired the property at a capital cost equal to the taxpayer's proceeds of disposition determined under paragraph 20(1)(*a*) of the Rules minus the amount by which the designated amount exceeds the fair market value of the property on February 22, 1994. In addition, paragraph 20(1)(*c*) of the Rules is amended, applicable to the 1994 and subsequent taxation years, to ensure that where a taxpayer elects under subsection 110.6(19) of the Act beyond 110 per cent of the fair market value of the property on February 22, 1994 the capital cost of the property on its reacquisition will be equal to the cost after the reacquisition determined under subsection 110.6(19) of the Act minus the valuation day "tax-free zone". This latter amendment ensures that the same penalty results on the subsequent disposition of the property as would have resulted if the property were not subject to the Rules.

Clause 249

Capital Gains Subject to Tax

Income Tax Application Rules
26(5)

Subsection 26(5) of the Rules is relevant for the purposes of computing the adjusted cost base of certain capital property held by a taxpayer (or a non-arm's length person) at the end of 1971. This rule has the effect of ignoring any increases in the adjusted cost base of

such property arising because of the operation of the stop-loss rules in paragraphs 40(2)(*e*), (*e*.1) and (*e*.2) and subsection 85(4) of the Act. Paragraph 40(2)(*e*) and 85(4) are being repealed, and subsection 26(5) of the Rules is thus being amended to ensure that it refers to those provisions as they read prior to their repeal. Reference is also being added to new subsection 40(3.3) of the Act, which largely replaces subsection 85(4) insofar as the latter provision applied to non-depreciable capital property.

Bond Conversion

Income Tax Application Rules
26(25)

Subsection 26(25) of the Rules provides for the determination of a taxpayer's cost of a bond owned on December 31, 1971 by the taxpayer and exchanged after May 6, 1974 by the taxpayer for another bond of the same debtor where section 77 of the *Income Tax Act* applied to the exchange. Subsection 26(25) of the Rules is amended as a consequence of the repeal of section 77 of the amended Act and the introduction of section 51.1 of the Act. New subsection 26(25) of the Rules applies to exchanges that occur after October 1994 which is the same effective date as the repeal of section 77 and the introduction of section 51.1.

Subclause 249(3)

Additions to Taxable Canadian Property

Income Tax Application Rules
26(30)

Subsections 26(1.1) to (29) of the Rules generally relate to the computation of a taxpayer's gain or loss on property the taxpayer held on December 31, 1971. New subsection 26(30) provides that these rules do not apply to a non-resident's disposition of a property that has become a taxable Canadian property because of amendments to the Act that take effect on April 26, 1995. Gains and losses on such property are computed according to a special proration rule in new subsection 40(9) of that Act, rather than according to these provisions of the Rules. New subsection 26(30) applies to dispositions that occur after April 26, 1995.

Clause 250

Deemed Trusts

Bankruptcy and Insolvency Act
67(3)

Subsection 67(3) of the *Bankruptcy and Insolvency Act* provides exceptions to the limitations against statutory deemed trusts in case of bankruptcy. The amendment to subsection 67(3) is consequential on the amendment to subsection 227(4) and the addition of subsection 227(4.1) of the *Income Tax Act*. This amendment comes into force on June 15, 1994.

Clause 251

Delegation

Canada Pension Plan
5(2)

New subsection 5(2) is added to the *Canada Pension Plan* to provide that the Minister of National Revenue may administratively delegate powers and duties of that Minister under the *Canada Pension Plan* to an officer or class of officers within Revenue Canada. This new subsection replaces the requirement that such delegation be done by a regulation under subsection 40(2) of the Act. This amendment will allow a more timely revision of the delegation of the Minister's powers and duties required by an amendment to the Act or a reorganization within Revenue Canada and is consequential to similar amendments to the Income Tax Act. This amendment applies on Royal Assent.

Clause 252

Withholdings –
Where Amount Not Deducted Not Remitted

Canada Pension Plan
23(3), (4) and (4.1)

Subsection 23(3) of the *Canada Pension Plan* provides for a deemed trust in respect of amounts deducted by an employer from the remuneration of an employee on account of *Canada Pension Plan* premiums. Subsection 227(4) of the *Income Tax Act* is being amended in response to the recent decision of the Supreme Court of Canada in Her Majesty the Queen v. Royal Bank of Canada, which held that current rules in the *Income Tax Act* creating a deemed trust do not give priority to the Crown over certain assignments of inventory and that clearer language is required to assign absolute priority to the Crown under that Act. Subsections 23(3) and (4) of the Act are similarly amended to provide such clear language for the purposes of the Act.

The amendments to subsections 23(3) and (4) are deemed to have come into force on June 15, 1994.

Clause 253

Electronic Records

Canada Pension Plan
24(2.1) and (2.2)

Subsection 24(1) of the *Canada Pension Plan* requires every employer paying remuneration to an employee employed by the employer in a pensionable employment to keep records and books of account. New subsection (2.1) of the Act requires an employer who keeps records in an electronic format to retain them in that format for the retention period referred to in subsection 24(2) of the Act. New subsection (2.2) enables the Minister to exempt an employer or a class of employers from the requirement to keep their records in an electronic format under such terms and conditions as are acceptable to the Minister.

These amendments apply on Royal Assent.

Clause 254

**Judicial Authorization –
Copies of Evidence**

Canada Pension Plan
25(7) and (10)

The Minister of National Revenue must, pursuant to subsection 25(6) of the *Canada Pension Plan*, obtain judicial authorization before imposing a requirement that a person provide information related to unnamed third parties. Subsection 25(7) sets out the conditions that must be met before such judicial authorization is granted. Paragraphs 25(7)(*c*) and (*d*) of the Act are repealed in order to simplify those conditions. The amendment to subsection 25(10) of the Act is consequential to the repeal of paragraphs 25(7)(*c*) and (*d*). Both these amendments, which apply on Royal Assent, are consequential to the repeal of paragraphs 231.2(3)(*c*) and (*d*) of the *Income Tax Act*, which were repealed in Bill C-36.

Copies as Evidence

Canada Pension Plan
25(12)

Subsection 25(12) of the *Canada Pension Plan* permits the making of copies of documents obtained in certain circumstances, and states that the copy made has the same probative force as the original document. This subsection is amended to enable the making of a print-out of an electronic document and sets out that this print-out has the same probative force as the original document.

This amendment applies to copies and print-outs made after Royal Assent.

Clause 255

**Appeal Period –
Reasons for Decisions**

Canada Pension Plan
28

Current subsection 28(1) of the *Canada Pension Plan* provides that an appeal to the Tax Court of Canada of a decision on an appeal to, the Minister of National Revenue in respect of the liability for an employer or an employee to make a contribution under that Act, or as to the amount of such contribution, may be made solely by registered mail. The amendment broadens the available methods in which an appeal may be filed by providing that appeals made under that subsection be governed by the *Tax Court of Canada Act*. It also extends the time within which an application to appeal may be made to 90 days after the expiration of the 90-day appeal period currently provided in subsection 28(1).

These amendments apply in respect of appeals instituted after the fourth month following the month in which this Act receives Royal Assent.

New subsection 28(1.2) of the *Canada Pension Plan* provides that the provisions of section 167 of the *Income Tax Act* (extension of time to appeal) apply with the exception of paragraph 167(5)(*a*) of that Act. That paragraph limits the time within which an application for an extension may be filed to one year after the expiration of 90 days after the mailing of a notice of objection. The balance of section 167 deals with the contents of the application and how that application is made.

Subsection 28(2) of the *Canada Pension Plan* provides that when the Tax Court of Canada hears an appeal made by an employee or an employer affected by a decision on an appeal to, the Minister under section 27 or 27.1 of the Act, the Tax Court must notify in writing the parties to the appeal of the reasons for its decision. In order to achieve greater procedural harmonization between income tax and Canada pension plan matters, this amendment removes the obligation on the Tax Court to provide written reasons for its decision. Subsection 28(2) will therefore be similar, in that respect, to

section 18.23 of the *Tax Court of Canada Act*, which governs appeals under the *Income Tax Act* that are subject to the informal procedure.

New subsection 28(1.2) and amended subsection 28(2) apply on Royal Assent.

Clause 256

Regulations for Delegation

Canada Pension Plan
40(2)

Subsection 40(2) of the *Canada Pension Plan* authorizes the making of regulations to delegate the powers and duties of the Minister of National Revenue under Part I of the Act. This subsection is repealed because of the addition of new subsection 5(2) to the Act, which allows for the delegation of powers and duties of the Minister on an administrative basis. This amendment applies on Royal Assent.

Clause 257

Definitions

Children's Special Allowances Act
2
"Minister"

The definition of Minister in section 2 of the *Children's Special Allowances Act* is changed to the Minister of National Revenue, applicable after August 27, 1995, as a result of the transfer of the administration of this Act from the Department of National Health and Welfare to the Department of National Revenue.

Clause 258

Release of Information

Children's Special Allowances Act
10(2)

Subsection 10(2) of the *Children's Special Allowances Act* (CSA) allows for the provision of information obtained by the Department of National Health and Welfare in the course of the administration of the Act and the regulations or the carrying out of an agreement entered into under section 11 of the Act, to various departments. The subsection is being amended to delete the reference to the Department of National Health and Welfare as the Department of National Revenue will be responsible for the administration of that Act. In addition, the subsection is amended to remove the list of Departments which receive information under that Act and will now restrict the communication of information to any person who needs the information for the purposes of the administration of that Act or the *Income Tax Act*.

These amendments apply after August 27, 1995.

Clause 259

Agreements with Provinces for Exchange of Information

Children's Special Allowances Act
11

Section 11 of the *Children's Special Allowances Act* allows the Minister of Health and Welfare to enter into agreements with the provinces for the exchange of information. The section is amended, applicable after August 27, 1995, to remove the reference to the Department of National Health and Welfare as a result of the transfer of the administration of this Act to the Department of National Revenue.

Clause 260

Deemed Trusts

Companies' Creditors Arrangement Act
18.3(2)

Subsection 18.3(2) of the *Companies' Creditors Arrangement Act* provides exceptions to the limitations against statutory deemed trusts in the case of certain bankruptcies. The amendment to subsection 18.3(2) is consequential on the amendment to subsection 227(4) and the addition of subsection 227(4.1) of the *Income Tax Act*.

This amendment is deemed to have come into force on September 30, 1997.

Clause 261

Issuance of Permits

Cultural Property Export and Import Act
39

Section 39 of the *Cultural Property Export and Import Act* empowers the Governor in Council, on the recommendation of the Minister of Heritage and the Secretary of State for External Affairs, to make regulations to deal with a number of matters. Paragraph 39(*a*) of the Act allows regulations to be made to deal with the issuance of permits under the Act.

The federal budget of 1990 provided that the fair market value, for purposes of the *Income Tax Act*, of objects proposed to be donated to certain institutions be determined by the Canadian Cultural Property Export Review Board. Amendments were made to both the *Income Tax Act* and the *Cultural Property Export and Import Act* to implement this measure.

This amendment to paragraph 39(*a*), which is consequential on those previous amendments, is intended to ensure that, in making such determinations and issuing certificates, the Canadian Cultural Property

Export Review Board may obtain information, documentation and undertaking from applicants, and may establish procedure and conditions to be followed as is necessary to their mandate.

This amendment is effective as of Royal Assent.

Clause 262

Delegation

Customs Act
2(4)

New subsection 2(4) is added to the *Customs Act* to provide that the Minister of National Revenue may administratively delegate powers and duties of the Minister under that Act to an officer or class of officers in Revenue Canada. This new subsection replaces the requirement that such delegation be done by a regulation under section 134 or paragraph 164(1)(*a*) of the Act. This amendment will allow a more timely revision of the delegation of powers and duties of the Minister required by an amendment to the Act or a reorganization within Revenue Canada and is consequential to similar amendments to the *Income Tax Act*. This amendment applies on Royal Assent.

Clause 263

Ministerial Order for Delegation

Customs Act
134

Section 134 of the *Customs Act* authorizes the Minister of National Revenue to delegate powers and duties of the Minister under sections 131 to 133 of the Act by Ministerial order. This section is repealed because of the addition of new subsection 2(4) to the Act, which allows for the delegation of powers and duties of the Minister on an administrative basis. This amendment applies on Royal Assent.

Clause 264

Regulations for Delegation

Customs Act
164(1)(*a*)

Paragraph 164(1)(*a*) of the *Customs Act* authorizes the making of regulations to delegate powers and duties of the Minister of National Revenue under that Act. This paragraph is repealed because of the addition of new subsection 2(4) to the Act, which allows for the delegation of powers and duties of the Minister on an administrative basis. This amendment applies on Royal Assent.

Clause 265

Goods Assisting Persons with Disabilities

Customs Tariff
Code 2531 of Schedule II of the *Customs Tariff*

Subclause 266(1) introduces a concessionary tariff provision (code 2531) in Schedule II to the *Customs Tariff* to remove the customs duties on goods specifically designed for people with disabilities. For a number of years, the *Customs Tariff* has provided duty-free entry for certain goods specified by Order, which are designed for the use of persons with disabilities. The February 1997 Federal Budget announced that, effective February 18, 1997, the *Customs Tariff* would be amended to eliminate the tariff on all goods specifically designed for people with disabilities.

This amendment is effective February 18, 1997. Further, the amendment does not apply to goods imported after the coming into force of Bill C-11. (C-11 replaces the *Customs Tariff* with a new, simpler Tariff.) This is because Bill C-11 contains provisions that replicate those that would be enacted by subclause 266(1).

Clause 266

Withholding –
Amounts Deducted and Not Remitted

Employment Insurance Act
86(2) and (2.1)

Subsections 86(2) and (2.1) of the *Employment Insurance Act* provide for a deemed trust in respect of amounts deducted by an employer from the remuneration of an employee on account of unemployment insurance premiums. The amendments to this subsection are similar to the amendments to subsection 227(4) of the *Income Tax Act* and they apply from the time that subsection 86(2) of the *Employment Insurance Act* took effect (i.e., June 30, 1996).

Clause 267

Electronic Records

Employment Insurance Act
87(3.1) and (3.2)

Subsection 87(3) of the *Employment Insurance Act* requires every employer paying remuneration to a person employed by the employer in insurable employment to keep records and books of account. New subsection 87(3.1) of the Act requires an employer who keeps records in an electronic format to retain them in that format for the retention period referred to in subsection 87(2) of the Act. New subsection 87(3.2) of the Act enables the Minister to exempt an employer or a class of employees from the requirement to keep their records in electronic format under such terms and conditions as are acceptable to the Minister.

This amendment applies on Royal Assent.

Clause 268

Appeal to the Tax Court of Canada

Employment Insurance Act
103(1)

Subsection 103(1) of the *Employment Insurance Act* provides for an appeal to the Tax Court of Canada of a decision on an appeal to the Minister of National Revenue in respect of a ruling or an assessment. Currently, the rules governing those appeals are found in the *Tax Court of Canada Rules of Procedure respecting the Unemployment Insurance Act*. Subsection 103(1) is amended to provide that such an appeal shall be made in accordance with the *Tax Court of Canada Act*. Therefore, the rules governing those appeals will be contained in both the above-mentioned Rules of Procedure and the *Tax Court of Canada Act*.

Subsection 103(1) also provides that the Court may, on application made within 90 days after a decision is communicated, extend the time for filing an appeal. This amendment extends the time in which such an application may be made to 90 days after the expiration of the 90-day appeal period.

This amendment applies in respect of appeals instituted after the fourth month following the month in which this Act receives Royal Assent.

Extension of Time to Appeal

Employment Insurance Act
103(1.1)

New subsection 103(1.1) of the *Employment Insurance Act* provides that the provisions of section 167 of the *Income Tax Act* (extension of time to appeal) apply with the exception of paragraph 167(5)(*a*) of that Act. That paragraph limits the time within which an application for an extension may be filed to one year after the expiration of 90 days after the mailing of a notice of objection. The balance of section 167 deals with the contents of the application and how that application is made.

This amendment applies in respect of appeals instituted after the fourth month following the month in which this Act receives Royal Assent.

Reasons for Decisions

Employment Insurance Act
103(3)

Subsection 103(3) of the *Employment Insurance Act* provides that when the Tax Court of Canada hears an appeal in respect of a ruling or an assessment, it must notify the parties to the appeal, in writing, of the reasons for its decision. In order to achieve greater procedural harmonization between income tax and employment insurance matters, this amendment removes the obligation on the Tax Court to provide written reasons for its decision. In this respect, amended subsection 103(3) will be similar to section 18.23 of the *Tax Court of Canada Act*, which governs appeals under the *Income Tax Act* that are subject to the informal procedure.

This amendment applies on Royal Assent.

Clause 269

Regulations for Delegation

Employment Insurance Act
108(1.1)

New subsection 108(1.1) is added to the *Employment Insurance Act* to provide that the Minister of National Revenue may administratively delegate powers and duties of that Minister under that Act to an officer or a class of officers in the Department. This new subsection replaces the requirement in the former *Unemployment Insurance Act* that such delegation be done by regulation. This amendment will allow a more timely revision of the delegation of the Minister's powers and duties required by an amendment to the Act or a reorganization within Revenue Canada, and is consequential to similar amendments to the *Income Tax Act*.

This amendment applies on Royal Assent.

Clause 270

Judges Sitting as Umpires

Employment Insurance Act
112(2)

Subsection 112(2) of the *Employment Insurance Act* currently provides that only judges and former judges appointed under a federal or provincial Act of Parliament may be appointed as an employment insurance umpire. This subsection is amended, with application after Royal Assent, to provide that superior court judges and former superior court judges may also be appointed to act in this capacity.

Clause 271

Judicial Authorization

Employment Insurance Act
126(16) and (19)

The Minister of National Revenue must, pursuant to subsection 126(15) of the Act, obtain judicial authorization before imposing a requirement that a person provide information related to unnamed third parties. Subsection 126(16) of the Act sets out the conditions that must be met before such judicial authorization is granted. Paragraphs 126(16)(*c*) and (*d*) of the Act are repealed in order to simplify those conditions. The amendment to subsection (19) of the Act is consequential on the repeal of paragraphs 126(16)(*c*) and (*d*). Both these amendments, which apply on Royal Assent, are consequential on the repeal of paragraphs 231.2(3)(*c*) and (*d*) of the *Income Tax Act*, which were repealed in Bill C-36.

Clause 272

Time for Repayment

Employment Insurance Act
145(7)

A claimant required to make a benefit repayment must repay the amount within a specific time. Subsection 145(7) of the Act sets out the date by which this repayment must be made, which, in the previous wording, referred to the date in section 146 of the Act. Since section 146 is being amended to use current terms from the *Income Tax Act*, subsection 145(7) is amended to require that the repayment must be made by April 30 in the next year, or, in the case of a claimant who dies after October in the year and before May in the next year, within six months after the day of death. This amendment is deemed to have come into force on June 30, 1996.

Clause 273

Returns

Employment Insurance Act
146(*b*)

A claimant required to make a benefit repayment must submit the social benefits repayment portions of the tax return. Section 146 of the Act sets out the time periods in which this return must be filed. As a result of changes to the filing requirements in the *Income Tax Act*, this provision is amended to refer to the claimants filing-due date, as defined in subsection 248(1) of the *Income Tax Act*. This amendment is deemed to have come into force on June 30, 1996.

Clause 274

Appeals –
Written Reasons Not Required

Employment Insurance Act
159(1.01)

Section 159 of the *Employment Insurance Act* deals with how various matters previously instituted under the *Unemployment Insurance Act* are to be dealt with under the *Employment Insurance Act*.

Subsection 70(2) of the *Unemployment Insurance Act* provided that the Tax Court of Canada could vary, reverse or affirm an assessment of the Minister of National Revenue. It also required that the Tax Court provide written reasons for any such decision. New subsection 159(1.01) of the *Employment Insurance Act* provides that subsection 70(2) of the *Unemployment Insurance Act* continues to apply in respect of appeals under that Act; however, the Court need not provide written reasons for any such decision. The amendment parallels similar amendments to the *Canada Pension Plan* and the *Employment Insurance Act* in respect of appeals under those Acts.

Subsection 159(1.01) applies after Royal Assent.

Clause 275

Definitions

Excise Tax Act
2

Section 2 of the *Excise Tax Act* is amended to add a definition of "document" and of "record". These definitions are made to parallel the definitions under Part IX of the Act. These amendments apply on Royal Assent.

Clause 276

Records and Books of Account

Excise Tax Act
20.2(2)

Subsection 20.2(2) of the *Excise Tax Act* requires each licensed carrier that is required to make a return of the amounts described in paragraph 20(1)(*b*) of the Act to keep records and books of account. This subsection is amended to add a reference to new subsection 98(2.01) of the Act, which deals with the retention of electronic records. These amendments come into force on Royal Assent.

Clause 277

Exception – First Split-Run Edition

Excise Tax Act
38.1

In December 1995 the *Excise Tax Act* was amended to impose an excise tax on split-run editions of periodicals. The tax is payable by either the publisher, a person related to the publisher, the distributor, the printer or the wholesaler of the periodical. The taxpayer is the first person on this list who is resident in Canada.

Some concern has been expressed that periodical distributors, printers and wholesalers could face a tax liability on an issue before they are reasonably able to determine whether a particular periodical is a split-run periodical. To give potential taxpayers more time to become aware of new split-run titles before incurring tax liability, new section 38.1 of the Act exempts from the tax the first split-run issue of a periodical if the person who would otherwise be responsible for paying the tax is the distributor, printer or wholesaler. This exemption will apply to periodicals published after March 6, 1996.

Clause 278

Electronic Records

Excise Tax Act
98(2.01) and (2.02)

Subsection 98(1) of the *Excise Tax Act* compels every person who is required to pay or collect taxes or other sums or to affix or cancel stamps, or every person who makes an application under any of sections 68 to 70 of the Act, to keep records and books of account. New subsection (2.01) requires a person who keeps records in an electronic format to retain them in that format for the retention period referred to in subsection 98(2) of the Act. New subsection (2.02) enables the Minister to exempt a person or a class of persons from the requirement to keep their records in an electronic format under such terms and conditions as are acceptable to the Minister.

This amendment applies on Royal Assent.

Clause 279

Copies as Evidence

Excise Tax Act
100(1.1)

Subsection 100(1.1) of the *Excise Tax Act* permits the making of copies of documents obtained in certain circumstances. This subsection is amended to enable the making of a print-out of an electronic document and sets out that this print-out, as well as a copy of any document, is evidence of the nature and content of the original document and has the same probative force as the original document.

This amendment applies to copies and print-outs made after Royal Assent.

Clause 280

Proof of Documents

Excise Tax Act
105(5)

An affidavit may be sworn by an officer who has charge of the appropriate records and, in such cases, a document annexed to an affidavit is a true copy of a document and is evidence of the nature and contents of the document. Subsection 105(5) of the *Excise Tax Act* is amended to give this same effect to a print-out of an electronic document. This amendment applies on Royal Assent.

Clause 281

Definitions

Excise Tax Act
123(1)

Subsection 123(1) of the *Excise Tax Act* is amended to add various items to the definition of record, and states that these items may be in writing or in any other form. These amendments apply on Royal Assent.

Clause 282

Electronic Records

Excise Tax Act
286(3.1) and (3.2)

Subsection 286(1) of the *Excise Tax Act* compels every person who carries on a business or is engaged in a commercial activity in Canada, every person who is required under Part IX of that Act to file a return and every person who makes an application for a rebate or refund to keep records and books of account. New subsection (3.1) requires a person who keeps records in an electronic format to retain them in that format for the retention period referred

to in subsection 286(3) of the Act. New subsection (3.2) enables the Minister to exempt a person or a class of persons from the requirement to keep their records in an electronic format under such terms and conditions as are acceptable to the Minister.

This amendment applies on Royal Assent.

Clause 283

Copies as Evidence

Excise Tax Act
291(1)

Subsection 291(1) of the *Excise Tax Act* permits the making of copies of documents obtained in certain circumstances, and states that the copy made has the same probative force as the original document. This subsection is amended to enable the making of a print-out of an electronic document and sets out that this print-out has the same probative force as the original document.

This amendment applies to copies and print-outs made after Royal Assent.

Clause 284

Provision of Information

Excise Tax Act
295

Paragraph 295(4)(*b*) and subparagraph 295(5)(*d*)(ii) of the *Excise Tax Act* were amended, effective June 30, 1996, to replace references to the *Unemployment Insurance Act* with references to the *Employment Insurance Act*. These provisions are amended by adding a reference to the *Unemployment Insurance Act*, to ensure that they apply in respect of legal proceedings relating to the administration or enforcement of that Act.

This amendment is deemed to have come into force on June 30, 1996.

Clause 285

Proof of Documents

Excise Tax Act
335(5)

An affidavit may be sworn by an officer who has charge of the appropriate records and, in such cases, a document annexed to an affidavit is a true copy of a document and is evidence of the nature and contents of the document. Subsection 335(5) of the Act is amended to give this same effect to a print-out of an electronic document. This amendment applies on Royal Assent.

Clause 286

Periodic Pension Payment

Income Tax Conventions Interpretation Act
5

Canada's tax treaties generally treat a "periodic pension payment" differently from a lump sum payment from a similar source. Section 5 of the *Income Tax Conventions Interpretation Act* (ITCIA) defines what constitutes a "periodic pension payment" for the purpose of Canada's tax treaties.

Paragraph (*c*) of the definition of "periodic pension payment" generally includes a payment received in a year under a registered retirement income fund (RRIF), unless the total of the payment (and all previous payments in the year under the RRIF) exceeds the greater of:

- twice what the "minimum amount" under the fund for the year would be if the definition "minimum amount" applied to all RRIFs, including those entered into before March 1986, and

- 10 per cent of the fair market value of the property held in connection with the fund at the beginning of the year.

Note that in calculating these amounts, where property has been transferred to the carrier in the year before the particular payment is made, it is assumed that the transferred property was actually held in connection with the fund at the beginning of the year (referred to below as the "transfer assumption").

Paragraph (*c*) of the definition of "periodic pension payment" is amended so that the definition generally includes a payment made in the year under an RRIF, unless the total of the payment and all payments previously made in the year under the RRIF exceeds the total of:

- the greater of

    - twice what the minimum amount under the fund for the year would be if the transfer assumption were made, the definition "minimum amount" applied to all RRIFs, including those entered into before March 1986, and the value of C in that definition were nil, and

    - 10 per cent of the fair market value of the property (other than any properties that are annuity contracts that cannot be surrendered for cash) held in connection with the fund at the beginning of the year, determined as if the transfer assumption were made, and

- the total periodic payments previously received by the RRIF trust in the year under annuity contracts held by the trust that are qualified investments (as defined by subsection 146.3(1) of the *Income Tax Act*) and that cannot be surrendered for cash.

This amendment is intended to ensure that, where an RRIF trust receives periodic payments under an annuity contract that it holds as a qualified investment, each payment flowed out to the RRIF annuitant is a "periodic pension payment".

Paragraph (*c*) excludes certain types, and portions of certain types, of RRIF payments. Paragraph (*c*) is also amended so that each type of RRIF payment ignored for the purpose of the existing rules is now

described as a "specified portion" of an RRIF payment – a term that is defined in new subsection 5.1(2) of the ITCIA. This amendment does not represent a change in policy.

This amendment applies to amounts paid after 1997.

Clause 287

Definition – "specified portion"

Income Tax Conventions Interpretation Act
5.1

Paragraph (*c*) of the definition "periodic pension payment" in section 5 of the *Income Tax Conventions Interpretation Act* (ITCIA) excludes certain types, and portions of certain types, of RRIF payments from being periodic pension payments. Paragraph (*c*) is amended so that any portion of an RRIF payment excluded for the purpose of the existing rules is now described as a "specified portion" of an RRIF payment – a term that is defined in new subsection 5.1(2) of the ITCIA. The ignored RRIF payments are those not required to be included in computing income and those for which "rollover" treatment is available under paragraph 60(*l*) of the *Income Tax Act*.

This amendment applies to amounts paid after 1997.

Clause 288

Provision of Information

Old Age Security Act
33(2)(*c*)

Paragraph 33(2)(*c*) of the *Old Age Security Act* allows for the provision of information obtained pursuant to the *Old Age Security Act* or the regulations to any officer or employee of the Department of National Health and Welfare for the purposes of the administration of certain Acts. The subsection is amended, applicable after August 27, 1995, to delete references to the *Children's Special Allowances Act* and the *Income Tax Act* as a result of the transfer of

the eligibility portion of the child tax benefit program to the Department of National Revenue.

Clause 289

Deputy Judges of the Court

Tax Court of Canada Act
9

Section 9 of the *Tax Court of Canada Act* provides for the appointment of deputy judges to the Tax Court. Subsection 9(1) of the Act provides that any judge or former judge of a superior, county or district court in Canada, or any judge or former judge of any other court who was appointed pursuant to a federal or provincial Act of Parliament, may be so appointed.

Subsection 9(1) is amended, with application after Royal Assent, to provide that former judges of the Tax Court of Canada may also be so appointed.

Clause 290

Extensions of Time

Tax Court of Canada Act
12(4)

Subsection 12(4) of the *Tax Court of Canada Act* lists the various statutes that provide for the Tax Court's exclusive jurisdiction to hear and determine applications for an extension of time. This subsection is amended, with application after Royal Assent, to add references to applications for extensions of time made under the *Employment Insurance Act* and the *Canada Pension Plan*.

Clause 291

General Procedure for Tax Appeals

Tax Court of Canada Act
17.2(1) to (3)

Section 17.2 of the *Tax Court of Canada Act* contains the proceedings applicable to appeals arising under the *Income Tax Act* and Part IX of the *Excise Tax Act* (GST) that are governed by the general procedure. Subsections 17.2(1) and (2) of the Act are amended to provide that the originating document may be filed not only by depositing it in, or mailing it to, the Registry of the Court but also by any other means (including electronic means) that may be provided for in the rules of Court (e.g., by facsimile transmission).

New subsection 17.2(2.1) of the Act provides that an originating document is deemed to be filed the day it is received by the Registry of the Court. This amendment removes uncertainty that occurs in determining when an appeal received by mail by the Registry was actually sent. New subsection 17.2(2.2) of the Act requires that, whenever the originating document is filed by a means other than mail or deposit, the appellant or his or her lawyer must send the original of the document and two copies thereof to the Registry of the Court. This will ensure that the Registry may adequately verify the accuracy of the copies of the originating document that must be served on the Deputy Attorney General of Canada under subsection 17.2(3) of the Act.

A consequential amendment is also made to subsection 17.2(3) so that the obligation for the Registry of the Court to transmit copies of the originating document is created at the time the Registry receives the original of the document as opposed to the time of filing. This is of particular importance where the document is filed by sending a copy of the originating document, as opposed to the original, by electronic means.

The amendments apply in respect of appeals instituted after the fourth month that follows the month in which this Act receives Royal Assent.

Clause 292

Informal Procedure for Tax Appeals

Tax Court of Canada Act
18.15

Section 18.15 of the *Tax Court of Canada Act* describes how appeals arising under the *Income Tax Act* and Part IX of the *Excise Tax Act* (GST) may be made to the Tax Court under the informal procedure. It is to be noted that section 18.15 applies to GST appeals because section 18.302 of the Act renders section 18.15 applicable to appeals referred to in section 18.3001 of the Act, that is, to GST appeals.

Filing Fee

Tax Court of Canada Act
18.15(3)

Subsection 18.15(3) of the *Tax Court of Canada Act* is amended to add paragraph (*b*). This paragraph provides that a taxpayer must pay a filing fee of $100 when instituting an appeal governed by the informal procedure.

This amendment applies to appeals instituted after the fourth month that follows the month in which this Act is assented to.

Manner of Filing an Appeal

Tax Court of Canada Act
18.15(3.1) to (3.3)

Subsection 18.15(3.1) of the *Tax Court of Canada Act* is amended to provide that a written appeal may be filed not only by depositing it in, or mailing it to, the Registry of the Court but also by any other means (including electronic means) that may be provided for in the rules of Court (e.g., by facsimile transmission).

New subsection 18.15(3.2) of the Act provides that a written appeal is deemed to be filed the day it is received by the Registry of the Court. This amendment removes uncertainty that occurs in determining when an appeal received by mail by the Registry was actually sent. New

subsection 18.15(3.3) of the Act requires that, whenever the written appeal is filed by a means other than mail or deposit, the appellant or his or her counsel or agent must send the original of the document to the Registry of the Court.

New subsections 18.15(3.1) to (3.3) apply to appeals instituted after the fourth month following the month in which this Act receives Royal Assent.

Waiver of Filing Fee

Tax Court of Canada Act
18.15(3.4) and (3.5)

Subsections 18.15(3.4) and (3.5) are being added to the *Tax Court of Canada Act* as a consequence of the introduction of the new requirement to pay a filing fee when an appeal under the *Income Tax Act* or part IX of the *Excise Tax Act* (GST) is instituted in the Tax Court and the appellant elects to have the informal procedure apply to the proceedings.

New subsection 18.15(3.4) allows the appellant to make an application to the Court not to have to pay the filing fee. The Court may grant that request if it believes that the levy of the fee would cause severe financial hardship to the applicant. The following situation may be an example of severe financial hardship: A is a single parent who has a dispute regarding the quantum of child tax benefit for which he or she is eligible. A's sole source of income is social assistance.

In deciding whether or not to grant such a request, new subsection 18.15(3.5) provides that the Court may solely consider the information contained in the written appeal. That subsection does not provide authority for the Court to access any other document or ask for representation from the appellant or the Attorney-General of Canada.

New subsections 18.15(3.4) and (3.5) apply to appeals instituted after the fourth month following the month in which this Act receives Royal Assent.

Clause 293

Reimbursement of Filing Fees

Tax Court of Canada Act
18.26

Section 18.26 of the *Tax Court of Canada Act* provides that if an income tax appeal governed by the informal procedure is allowed, the Tax Court may, depending on the extent to which the appellant is successful, award costs to an appellant. The section is amended to provide that, where the appeal is allowed, the appellant that paid a filing fee in accordance with paragraph 18.15(3)(*b*) of the Act has the right to be reimbursed the fee by the Court even if the appellant has been successful in part only.

This amendment is effective upon Royal Assent.

Clause 294

Variation of Filing Fee

Tax Court of Canada Act
18.27

Section 18.27 of the *Tax Court of Canada Act* provides the Governor in Council with the authority to make regulations to increase, amongst other things, the threshold amounts that an income tax appeal must meet to qualify, upon the making of an election to that effect by the appellant, for the application of the informal procedure. Subsection 18.27(1) of the Act is amended by adding paragraph (*d*). This paragraph provides the Governor in Council with the authority to make regulations to vary the amount of the filing fee that a taxpayer who elected that a GST or ITA appeal be governed by the informal procedure must pay under paragraph 18.15(3)(*b*) of the Act. The amount of $100 would, therefore, be capable of being increased or decreased by a regulation made by the Governor in Council.

This amendment is effective upon Royal Assent.

Clause 295

Appeals Other Than Income Tax or GST

Tax Court of Canada Act
18.29(1) and (3)

Subsection 18.29(1) of the *Tax Court of Canada Act* provides that the provisions governing the informal procedure for income tax appeals also apply to appeals arising under Part I of the *Canada Pension Plan*, Parts III or VII of the *Unemployment Insurance Act* or, to some extent, the *Old Age Security Act*, the *War Veterans Allowance Act* or Part XI of the *Civilian War Pensions and Allowances Act*.

The first amendment to subsection 18.29(1), which applies on Royal Assent, ensures that no filing fee will be levied where an appeal governed by the informal procedure arises under any of the above-mentioned legislation. This is achieved by deleting from the list of provisions referred to in that provision paragraph 18.15(3)(*b*) and subsections 18.15(3.4) and (3.5) of the Act.

The second amendment to subsection 18.29(1) provides that new subsections 18.15(3.1) to (3.3) of the Act, which deal with the manner of filing an appeal, apply in respect of the above-mentioned legislation. In particular, the reference to subsection 18.15(3.2) deems a written appeal to be filed on the day it is received by the Registry of the Court.

Finally, subsection 18.29(3) of the Act is amended to provide that subsection 18.15(3.2) applies, in addition to the provisions already referred to in subsection 18.29(1), to applications for extension of time to make an objection or an appeal under the *Income Tax Act* or Part IX of the *Excise Tax Act* (GST). In addition, references to applications for extensions of time under the *Employment Insurance Act* and the *Canada Pension Plan* have been added.

The second amendment to subsection 18.29(1) and the amendment to subsection 18.29(3) apply in respect of appeals instituted after the fourth month following the month in which this Act receives Royal Assent.

Clauses 296 and 297

GST Appeals

Tax Court of Canada Act
18.3001 and 18.3002

Sections 18.3001 to 18.302 of the *Tax Court of Canada Act* apply to appeals arising under Part IX of the *Excise Tax Act* (GST). Section 18.3001 and subsection 18.3002(1) currently refer to section 18.301 of the Act. However, that section was renumbered as 18.302 by section 224 of Chapter 27 of the Statutes of Canada, 1993, effective upon Royal Assent, June 10, 1993. The amendments to section 18.3001 and subsection 18.3002(1) substitute a reference to section 18.302 of the Act for the reference to section 18.301.

The amendments are deemed to have come into force on June 10, 1993.

Clause 298

Reimbursement of Filing Fee

Tax Court of Canada Act
18.3009

Section 18.3009 of the *Tax Court of Canada Act* provides that where a GST appeal governed by the informal procedure is allowed, the Tax Court may, depending on the extent to which the appellant is successful, award costs to the appellant. The section is amended to provide that, where the appeal is allowed, an appellant that paid a filing fee in accordance with paragraph 18.15(3)(*b*) of that Act has the right to be reimbursed the fee by the Court even if the appellant has been successful in part only.

The amendment is effective upon Royal Assent.

Clauses 299 and 300

Definitions and Filing Requirements

Tax Rebate Discounting Act
2(1)

The *Tax Rebate Discounting Act* establishes the procedures to be followed by tax discounters who acquire the right to a taxpayer's income tax refund, including the filing of prescribed forms.

The definition "Minister" in this Act is being amended to refer to the Minister of National Revenue as a consequence of the transfer of the administration of this Act from the Department of Industry to the Department of National Revenue.

The definition "prescribed" in this Act is being amended to remove the need to amend the regulations made under this Act in order to change the content of prescribed forms. The amendment will allow the prescribed forms to be revised on the authorization of the Minister of National Revenue, the same as the procedure followed for revising prescribed forms under the other Acts administered by that Minister.

Subparagraph 4(1)(*b*)(i) of the Act is being amended to delete the requirement that the discounting transaction be described in a prescribed manner. This change is consequential to the amendment of the definition "prescribed" described above. There is no need to refer to a prescribed manner, the description of the transaction will be part of the prescribed form.

These amendments apply on Royal Assent.

Clause 301

Prescribed Form of Notice

Tax Rebate Discounting Act
5(*b*)

Paragraph 5(*b*) of the French version of the *Tax Rebate Discounting Act* is amended to reflect the amendments made to the definition of "prescribed" in the English version of the Act, as the French version of the Act does not contain such a definition.

This amendment applies on Royal Assent.

Clause 302

UI Withholdings

Unemployment Insurance Act
57(2)

Subsection 57(2) of the *Unemployment Insurance Act* formerly provided for a deemed trust in respect of amounts deducted by an employer from the remuneration of an employee on account of unemployment insurance premiums. The amendments to this subsection are similar to the amendment to subsection 227(4) of the *Income Tax Act*. This amendment is deemed to have come into force on June 15, 1994.

Clause 303

Disposition of Farmland

Western Grains Transition Payments Act
4(4)

Subsection 4(4) deals with the income tax treatment of payments received under the *Western Grain Transition Payments Act*. Subsection 4(4) of the Act is amended to clarify that, where a payment is received by a taxpayer in respect of farmland that was

held as capital property and that was disposed of by the taxpayer before receipt of the payment, the amount must be applied to reduce the adjusted cost base of the land immediately before the disposition. This ensures that taxpayers who dispose of their farmland before receiving the payment are treated as advantageously for tax purposes as those who had received the payment before disposition.

This amendment applies to payments made after June 22, 1995.

Clause 304

Small Business Deduction

S.C. 1988, c. 55
102(1) and (5)

Income Tax Act
125(1)

Subsection 125(1) of the *Income Tax Act* establishes the special low rate of tax applicable to the income of a Canadian-controlled private corporation from an active business carried on in Canada. This preferential tax rate is provided by way of an annual tax credit, commonly referred to as the "small business deduction". This amendment repeals certain of the provisions enacting the 1988 amendments to subsection 125(1) of the Act. It is strictly consequential on the amendment to subsection 125(1) of the Act contained in this legislation, which corrects an error that occurred at the time of the 1988 amendments.

Clause 305

Foreign Affiliates

S.C. 1995, c. 21
46(8)

Subsection 46(8) of *An Act to amend the Income Tax Act, the Income Tax Application Rules and related Acts*, being chapter 21 of the Statutes of Canada, 1995 provided the coming into force for certain

amendments to the foreign affiliate rules in the *Income Tax Act*, including an amendment to subsection 95(6) of that Act. Subsection 46(8), which is being replaced by new subsections 46(8) and (9), indicated that those amendments applied to taxation years of foreign affiliates that began after 1994, except that, where there was a change to the taxation year of a foreign affiliate in 1994 and after February 22, 1994, the amended subsection applied to taxation years of the foreign affiliate that ended after 1994 unless certain conditions were met.

The coming into force for the amendment to subsection 95(6) of the *Income Tax Act* has been changed by new subsection 46(9). That amendment now applies to rights acquired and shares acquired or disposed of in taxation years of foreign affiliates that begin after 1994, except that, where there was a change to the taxation year of a foreign affiliate in 1994 and after February 22, 1994, the amendment applies to rights acquired and shares acquired or disposed of in taxation years of the foreign affiliate that end after 1994. However, where a written request to change the taxation year of a particular foreign affiliate was made before February 22, 1994 to the income taxation authority of the country in which the affiliate was resident and subject to income taxation, or where the change in taxation year causes the first taxation year commencing after 1994 to commence earlier than if there had been no change in the affiliate's taxation year, the amendment will remain applicable to rights acquired and shares acquired or disposed of in taxation years of foreign affiliates that began after 1994.

Clause 306

Scientific Research and Experimental Development

Income Tax Budget Amendments Act
30(26) and (26.1)

Subsection 30(26) of the *Income Tax Budget Amendments Act*, S.C. 1996, c. 21, provides the coming-into-force for a number of changes to provisions of the *Income Tax Act* relating to scientific research and experimental development (SR&ED).

Before these changes, where a taxpayer (the "payer") contracted with another person (the "performer") with whom the payer was not dealing at non-arm's length for the performance of SR&ED, the payer would generally have a qualified expenditure in the amount of the payment paid or payable under the contract, while for the performer the amount would be a contract payment which would reduce the performer's total expenditures eligible for SR&ED treatment.

Section 30 of the *Income Tax Budget Amendments Act*, amended the definitions "contract payment" and "qualified expenditure" in subsection 127(9) of the *Income Tax Act* to provide that payments under contracts made between non-arm's length parties would no longer constitute qualified expenditures for payers, or contract payments for performers. That is, in non-arm's length SR&ED contract situations, it is now the SR&ED performer who is eligible to claim SR&ED tax treatment in respect of the expenditures to which the contract relates. This amendment applies to taxation years that begin after 1995.

However, because paragraph (*f*) of the definition "qualified expenditure", which now generally excludes amounts paid under non-arm's length contracts, contemplates a taxpayer who is a payer and not a performer in respect of an SR&ED contract, while the definition "contract payment" contemplates a taxpayer who is a performer of SR&ED under a contract, in certain circumstances where a non-arm's length payer and performer do not have the same taxation year end, the existing coming-into-force of these changes could have unintended results.

EXAMPLE:

A non-arm's length payer has a taxation year beginning February 1, 1996, to which the new provisions apply, while the performer has a taxation year beginning November 1, 1995, to which the old provisions apply. The payer will not have a qualified expenditure in respect of the non-arm's length payment under the new rules. The payment will be a contract payment for the performer which will reduce its qualified expenditures. As a result, according to the existing coming-into-force no taxpayer will be eligible for SR&ED tax treatment in respect of the SR&ED performed under the contract.

Amended subsection 30(26) and new subsection 30(26.1) address this by providing that, in situations such as this where taxation years of contracting parties fall on opposite sides of the original coming-into-force, the relevant amounts are deemed to be governed by the new rules, such that the performer, and not the payer, is eligible for SR&ED treatment in respect of the amount.

These provisions are deemed to have come into force on June 20, 1996.

Clause 307

Definitions – Support

Income Tax Budget Amendments Act, 1996
9(8)

Subsection 9(8) of the *Income Tax Budget Amendments Act, 1996* provides that the definitions "child support amount", "commencement day" and "support amount" in subsection 56.1(4) of the *Income Tax Act*, which are relevant under the new tax regime applicable to support amounts, are applicable after 1996. An exception is provided under that subsection to ensure that amounts received under decrees, orders, judgment or written agreements that were subject to the former regime, and which were not required to be included in the recipient's income continue to be tax exempt, provided the amounts paid for the support of children are not modified after April 1997.

This amendment ensures that the tax treatment of support payments triggered by events that occurred before the implementation of the new regime is not modified. This includes certain amounts payable under court orders or written agreements entered into or last amended after March 27, 1987 and before 1988 and which, following the Gagnon decision (86 DTC 6179), were ruled deductible by the payers (even though the recipients had no discretion as to their use). Despite their deductibility from a payer's standpoint, those amounts were not required to be included in the recipients' incomes.

Also, with respect to marriage breakdowns that occurred before 1993, in order for a recipient to be taxed on support amounts received, the payer and the recipient had to live apart pursuant to their divorce,

judicial separation or written separation agreement. This amendment ensures that the new regime does not subject to tax amounts that were exempt because this particular requirement was not met in the hands of the recipients.

This amendment is retroactive to April 25, 1997, which is the date the legislation implementing the new tax regime for support amounts was assented to.

Clause 308

Canadian Exploration Expenses, Canadian Development Expenses, and Canadian Oil and Gas Property Expenses

Income Tax Budget Amendments Act, 1996
18(10)

Subsection 87(4.4) of the *Income Tax Act* applies where a corporation that has entered into a flow-through share arrangement with a shareholder amalgamates with another corporation. The rules in this subsection generally enable the corporation formed as a consequence of the amalgamation to renounce expenses incurred after the amalgamation to the shareholder.

Two amendments to subsection 87(4.4) were made in the *Income Tax Budget Amendments Act, 1996*. One amendment eliminated a reference to flow-through share renunciations under subsection 66(12.64), together with a corresponding reference in subsection 87(4.4) to Canadian oil and gas property expenses. This amendment was consequential on the repeal of subsection 66(12.74). The existing text of the coming-into-force provision is flawed with regard to amalgamations that occur after 1995 and before 1999 because that corresponding reference has been omitted.

Subsection 18(10) of the *Income Tax Budget Amendments Act, 1996*, which brought this change into force, has been corrected in respect of such amalgamations to include the corresponding reference to Canadian oil and gas property expenses.